State of California Department of Consumer Affairs

CALIFORNIA TENANTS

A Guide to Residential Tenants' and Landlords' Rights and Responsibilities

Pete Wilson
Governor

Joanne Corday Kozberg
Secretary, State and Consumer Services Agency

Ron Joseph
Acting Director, Department of Consumer Affairs

NOTICE

The opinions expressed in this booklet are those of the authors and should not be construed as representing the opinions or policy of any agency of the State of California. While this publication is designed to provide accurate and current information about the law, readers should contact an attorney or other expert for advice in particular cases, and should also consult the relevant statutes and court decisions when relying on cited material.

PUBLISHING INFORMATION

California Tenants–A Guide to Residential Tenants' and Landlords' Rights and Responsibilities was written by the Department of Consumer Affairs' Legal Services Unit and was edited by the Department's Communications and Education Division. The first printing of this booklet was funded by a grant from the California Consumer Protection Foundation.

The California Department of Fair Employment and Housing contributed to the text on state and federal fair housing laws.

ORDERING INFORMATION

This publication is available on the Internet (beginning March, 1998). See the Department of Consumer Affairs' homepage at www.dca.ca.gov.

For information on ordering copies of this booklet, see page 65.

Department of Consumer Affairs, 1998

INTRODUCTION

What should a tenant do if his or her apartment needs repairs? Can a **landlord** force a **tenant** to move? How many days' notice does a tenant have to give a landlord before the tenant moves? Can a landlord raise a tenant's rent? *California Tenants—A Guide to Residential Tenants' and Landlords' Rights and Responsibilities* answers these questions and others.

Whether the tenant is renting a room, an apartment, a house, or a duplex, the landlord-tenant relationship is governed by federal, state, and local laws. This booklet focuses on California laws that govern the landlord-tenant relationship, and suggests things that both the landlord and tenant can do to make the relationship a good one. Although the booklet is written from the tenant's point of view, landlords can also benefit from its information.

Tenants and landlords should discuss their expectations and responsibilities before they enter into a rental agreement. If a problem occurs, the tenant and landlord should try to resolve the problem by open communication and discussion. Honest discussion of the problem may show each party that he or she is not completely in the right, and that a fair compromise is in order.

If the problem is one for which the landlord is responsible (see pages 21-23), the landlord may be willing to correct the problem or to work out a solution without further action by the tenant. If the problem is one for which the tenant is responsible (see page 21), the tenant may agree to correct the problem once the tenant understands the landlord's concerns. If the parties cannot reach a solution on their own, they may be able to resolve the problem through **mediation** or **arbitration** (see page 44). In some situations, a court action may provide the only solution (see pages 27-28, 38-43).

The Department of Consumer Affairs hopes that tenants and landlords will use this booklet's information to avoid problems in the first place, and to resolve those problems that do occur.

HOW TO USE THIS BOOKLET

You can probably find the information you need by using this booklet's Table of Contents, Index, and Glossary of Terms.

Table of Contents

The Table of Contents (pages iii-iv) shows that the booklet is divided into nine main sections. Each main section is divided into smaller sections. For example, if you want information about the rental agreement, look under "Rental Agreements and Leases" in the "BEFORE YOU AGREE TO RENT" section.

Index

Most of the topics are mentioned in the Table of Contents. If you don't find a topic there, look in the Index (page 56). It's more specific than the Table of Contents. For example, under "Cleaning" in the Index, you'll find the topics "deposits or fees," "tenant's responsibility," etc.

Glossary

If you just want to know the meaning of a term, such as **"eviction"** or **"holding deposit**," look in the Glossary (page 45). The glossary gives the meaning of 61 terms. Each of these terms also is printed in **boldface type** the first time that it appears in each section of the booklet.

The Department of Consumer Affairs hopes that you will find the information you're looking for in this booklet. If you don't, call or write one of the resources listed in "Getting Help From a Third Party" (see page 43) or "Tenant Information and Assistance Resources" (see page 51).

WHO IS A "LANDLORD" AND WHO IS A "TENANT?"

General Information About Landlords and Tenants

A **landlord** is a person or a company that owns a rental unit. The landlord rents or leases the rental unit to another person, called a **tenant**, for the tenant to live in. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period.

Sometimes, the landlord is called the "owner," and the tenant is called a "resident."

A **rental unit** is an apartment, house, duplex, condominium, or room that a landlord rents to a tenant to live in. In this booklet, the term rental unit means any one of these. Because the tenant uses the rental unit to live in, it is called a "residential rental unit."

Often, a landlord will have a rental agent or a property manager who manages the rental property. The agent or manager is employed by the landlord and represents the landlord. In most instances, the tenant can deal with the rental agent or property manager as if this person were the landlord. For example, a tenant can work directly with the agent or manager to resolve problems. When a tenant needs to give the landlord one of the tenant notices described in this booklet (for example, see pages 27, 29), the tenant can give the notice to the landlord's rental agent or property manager.

The name and address of the manager and an owner of the building (or other person who is authorized to receive legal notices for the owner) must be written in the rental agreement or lease, or posted conspicuously in the rental unit or building.[1]

Special Situations

The tenant rights and responsibilities discussed in this booklet apply only to people whom the law defines as tenants. Generally, under California law, **lodgers** and residents of hotels and motels have the same rights as tenants.[2] Situations in which lodgers and residents of hotels and motels do and do not have the rights of tenants, and other special situations, are discussed in the sidebar.

Special Situations

Hotels and motels

If you are a resident in a hotel or motel, you do *not* have the rights of a tenant in any of the following situations:

1. You live in a hotel, motel, residence club, or other lodging facility for 30 days *or less*, and your occupancy is subject to the state's hotel occupancy tax.
2. You live in a hotel, motel, residence club, or other lodging facility for *more than 30 days*, but have not paid for all room and related charges owing by the thirtieth day.
3. You live in a hotel or motel to which the manager has a right of access and control, and all of the following is true:
   - The hotel or motel allows occupancy for periods of fewer than seven days.
   - *All* of the following services are provided for *all* residents:
     - a fireproof safe for residents' use;
     - a central telephone service;
     - maid, mail, and room service; and
     - food service provided by a food establishment that is on or next to the hotel or motel grounds and that is operated in conjunction with the hotel or motel.

If you live in a unit described by either 1, 2 or 3 above, you are *not* a tenant; you are a **guest**. Therefore, you don't have the same rights as a tenant.[3] For example, the proprietor of a hotel can "lock out" a guest who doesn't pay his or her room charges

(Continued on page 3)

[1] *Civil Code Sections 1961, 1962, 1962.5. See Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont Ed. Bar, 1997).*

[2] *Civil Code Section 1940(a).*

[3] *Civil Code Section 1940.*

on time, while a landlord would have to begin formal eviction proceedings to evict a nonpaying tenant.

Residential hotels

A guest in a **residential hotel** gains the legal rights of a tenant if the guest lives in the residential hotel for more than 30 days and pays all of the room and related charges that are due by the thirtieth day. "Residential hotel" means any building containing six or more guest rooms or efficiency units which are rented for occupation or for sleeping purposes by guests, and which are also the primary residences of these guests.[4]

The proprietor of a residential hotel cannot prevent a guest from gaining the legal rights of a tenant by requiring the guest to move, or to check out and reregister, before the guest has lived there more than 30 days. This is unlawful if the proprietor's purpose is to keep the guest from legally becoming a tenant.[5] A person who violates this law may be punished by a $500 civil penalty and may be required to pay the guest's attorney fees.

Single lodger in a private residence

A **lodger** is a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger and has overall control of the house.[6] Most lodgers have the same rights as tenants.[7]

However, in the case of a *single* lodger in a house where there are *no other lodgers*, the owner can evict the lodger without using formal eviction proceedings. The owner can give the lodger written notice that the lodger cannot continue to use the room. The length of the notice must be the same as the amount of time between rent payments (for example, 30 days). (See "Tenant's notice to end a periodic tenancy," page 29.) When the owner has given the lodger proper notice and the time has expired, the lodger has no further right to remain in the owner's house and may be removed as a trespasser.[8]

Transitional housing

Some tenants are residents of "transitional housing." Transitional housing provides housing to formerly homeless persons for periods of 30 days to 24 months. Special rules cover the behavior of residents in, and eviction of residents from, transitional housing.[9]

Mobilehome parks and recreational vehicle parks

Special rules in the Mobilehome Residency Law[10] or the Recreational Vehicle Park Occupancy Law,[11] and not the rules discussed in this booklet, cover most landlord-tenant relationships in mobilehome parks and recreational vehicle parks.

However, normal eviction procedures (see pages 35-42) must be used to evict certain mobilehome residents. Specifically, a person who leases a mobilehome from its owner (who has leased the site for the mobilehome directly from the management of the mobilehome park) is subject to the eviction procedures described in this booklet, and not the eviction provisions in the Mobilehome Residency Law. The same is true for a person who leases both a mobilehome and the site for the mobilehome from the mobilehome park management.[12]

[4] *Civil Code Section 1940.1(a), Health and Safety Code Section 50519(b)(1).*

[5] *Civil Code Section 1940.1.*

[6] *Civil Code Section 1946.5.*

[7] *Civil Code Section 1940(a).*

[8] *Civil Code Section 1946.5, Penal Code Section 602.3.*

[9] *Health and Safety Code Sections 50580-50591.*

[10] *Civil Code Sections 798-799.7.*

[11] *Civil Code Sections 799.20-799.79.*

[12] *California Practice Guide, Landlord-Tenant, Paragraphs 11:27-11:28 (Rutter Group 1996).*

LOOKING FOR A RENTAL UNIT

Looking for and Inspecting Rental Units

Looking for a rental unit

When you are looking for a rental unit, the most important things to think about are:

- The dollar limit that you can afford for monthly rent and utilities.
- The dollar limit that you can afford for all deposits that may be required (for example, holding and security deposits).
- The location that you want.

In addition, you also should carefully consider the following:

- The kind of rental unit that you want (for example, an apartment complex, a duplex, or a single-family house), and the features that you want (such as the number of bedrooms and bathrooms).
- Whether you want a month-to-month rental agreement or a lease (see pages 10-11).
- Access to schools, stores, public transportation, medical facilities, child care facilities, and other necessities and conveniences.
- The character and quality of the neighborhood (for example, its safety and appearance).
- The condition of the rental unit (see "Inspecting before you rent," page 5).
- Other special requirements that you or your family members may have (for example, wheelchair access).

You can obtain information on places to rent from many sources. Local newspapers carry classified advertisements on available rental units. In many areas, there are free weekly or monthly publications devoted to rental listings. Local real estate offices and property management companies often have rental listings. Bulletin boards in public buildings, local colleges, and churches often have notices about places for rent. You can also look for "For Rent" signs in the neighborhoods where you would like to live.

Prepaid Rental Listing Services

Businesses known as prepaid rental listing services sell lists of rental units that are available. These businesses are regulated by the California Department of Real Estate and must be licensed.[13]

If you use a prepaid rental listing service, it must enter into a written contract with you before it accepts any money from you.[14] The contract must describe the services that the prepaid rental listing service will provide you.

Before you sign a contract with a prepaid rental listing service or pay for information about available rental units, ask if the service is licensed and whether the list of rentals is current. The contract cannot be for more than 90 days. The law requires prepaid rental listing services to give you a minimum of three current rentals within five days after you sign the contract.

You may be able to receive a full or partial refund of the fee you paid for the list if the law is violated.[15] For example, if the list you buy contains fewer than three current rental units, you can demand a full refund from the prepaid rental listing service within 15 days of signing the contract. Your demand for a refund must be in writing.

Also, if you don't find a rental unit from the list you bought, or if you rent from another source, the prepaid rental listing service can keep only $25 of the fee that you paid. The service must refund the balance, but you must request the refund within 10 days after the end of the contract. Your request for a refund must be sent by certified or registered mail. Look in the contract for the address. The service must make the refund within 10 days after it receives your request.

[13] *Business and Professions Code Section 10167.*

[14] *Business and Professions Code Section 10167.9(a).*

[15] *Business and Professions Code Section 10167.10.*

Inspecting before you rent

Before you decide to rent, carefully inspect the rental unit with the landlord or the landlord's agent. Make sure that the unit has been maintained well. Use the inventory checklist (page 61) as an inspection guide. When you inspect the rental unit, look for the following problems:

- Cracks or holes in the floor, walls, or ceiling.
- Signs of leaking water or water damage in the floor, walls, or ceiling.
- Signs of rust in water from the taps.
- Leaks in bathroom or kitchen fixtures.
- Lack of hot water.
- Inadequate lighting or insufficient electrical outlets.
- Inadequate heating or air conditioning.
- Inadequate ventilation or offensive odors.
- Defects in electrical wiring and fixtures.
- Damaged flooring.
- Damaged furnishings (if it's a furnished unit).
- Signs of insects, vermin, or rodents.
- Accumulated dirt and debris.
- Inadequate trash and garbage receptacles.
- Chipping paint in older buildings. (Paint chips sometimes contain lead, which can cause lead poisoning if children eat them. If the building was built before 1978, you may want to read the booklet, "Protect Your Family From Lead in Your Home," which is available by calling 1-800-424-LEAD.)
- Signs of asbestos-containing materials in older buildings, such as flaking ceiling tiles, or crumbling pipe wrap or insulation. (Asbestos particles can cause serious health problems if they are inhaled.)

Also, look at the exterior of the building and any common areas, such as hallways and courtyards. Does the building appear to be well-maintained? Are the common areas clean and well-kept?

The quality of rental units can vary greatly. You should understand the unit's good points and shortcomings, and consider them all when deciding whether to rent, and whether the rent is reasonable.

Ask the landlord who will be responsible for paying for utilities (gas, electric, water, and trash collection). You will probably be responsible for some, and possibly all, of them. Be sure that you can afford the total amount of the rent and the utilities each month.

If the rental unit is a house or duplex with a yard, ask the landlord who will be responsible for taking care of the yard. If you will be, ask whether the landlord will supply necessary equipment, such as a lawn mower and a hose.

During this initial walk-through of the rental unit, you will have the chance to see how your potential landlord reacts to your concerns about it. At the same time, the landlord will learn how you handle potential problems. You may not be able to reach agreement on every point, or on any. Nonetheless, how you get along will help both of you decide whether you will become a tenant.

If you find problems like the ones listed above, discuss them with the landlord. If the problems are ones that the law requires the landlord to repair (see pages 21-23), find out when the landlord intends to make the repairs. If you agree to rent the unit, it's a good idea to get these promises in writing, including the date by which the repairs will be completed.

If the landlord isn't required by law to make the repairs, you should still write down a description of any problems if you are going to rent the property. It's a good idea to ask the landlord to sign and date the written description. Also, take photographs or a video of the problems. Your signed, written description and photographs or video will document that the problems were there when you moved in, and can help avoid disagreement later about your responsibility for the problems.

Finally, it's a good idea to walk or drive around the neighborhood during the day and again in the evening. Ask neighbors how they like living in the area. If the rental unit is in an apartment complex, ask some of the tenants how they get along with the landlord and the other tenants. If you are concerned about safety, ask neighbors and tenants if there have been any problems, and whether they think that the area is safe.

The Rental Application

Before renting to you, most landlords will ask you to fill out a written **rental application form.** A rental application is different from a **rental agreement** (see page 10). The rental application is like a job or credit application. The landlord will use it to decide whether to rent to you.

A rental application usually asks for the following information:

- The names, addresses, and telephone numbers of your current and past employers.
- The names, addresses, and telephone numbers of your current and past landlords.
- The names, addresses, and telephone numbers of people whom you want to use as references.
- Your social security number.
- Your driver's license number.
- Your bank account numbers.
- Your credit account numbers for credit reference.

The application also may contain an authorization for the landlord to obtain a copy of your **credit report**, which will show the landlord how you have handled your financial obligations in the past.

The landlord may ask you what kind of job you have, your monthly income, and other information that shows your ability to pay the rent. It is illegal for the landlord to ask you questions about your race, color, national origin, ancestry, religion, sex, sexual preference, or age. It also is illegal for the landlord to ask whether you have persons under the age of 18 living in your household, whether you are married, or whether you have a disability[16] (see "Unlawful Discrimination," page 8).

The landlord may ask you about the number of people who will be living in the rental unit. In order to prevent overcrowding of rental units, California has adopted the Uniform Housing Code's occupancy requirements,[17] and the basic legal standard is set out in footnote 17. However, the practical rule is this: a landlord can establish reasonable standards for the number of people per square feet in a rental unit, but the landlord cannot use overcrowding as a pretext for refusing to rent to tenants with children if the landlord would rent to the same number of adults.[18]

Credit Checks

The landlord or the landlord's agent will probably use your rental application to check your credit history and past landlord-tenant relations. The landlord may obtain your credit report from a **credit reporting service** to help him or her decide whether to rent to you. Credit reporting services (or "credit bureaus") keep records of people's credit histories, called "credit reports." Credit reports state whether a person has been reported as being late in paying bills, has been the subject of an **unlawful detainer lawsuit** (see page 38), or has filed bankruptcy.

Other businesses, called **tenant screening services**, collect and sell information on tenants, such as whether they pay their rent on time and whether they have been the subject of an unlawful detainer lawsuit.

The landlord may use this information to make a final decision on whether to rent to you. Generally, landlords prefer to rent to people who have a history of paying their rent and other bills on time.

A landlord usually doesn't have to give you a reason for refusing to rent to you. However, if the decision is based partly or entirely on negative information from a credit reporting agency or a tenant screening service, the law requires the landlord to give you a written notice stating all of the following:

- The decision was based partly or entirely on information in the credit report; and

[16] *Civil Code Sections 51-53; Government Code Sections 12900-12996; 42 USC Section 3601 and following. However,* after *you and the landlord have agreed that you will rent the unit, the landlord may ask for proof of your disability* if *you ask for a "reasonable accommodation" for your disability, such as installing special faucets or door handles. (Brown and Warner, The Landlords' Law Book, Vol. I: Rights & Responsibilities, page 9/18 [NOLO Press 1996]).*

[17] *Health and Safety Code Section 17922; see Uniform Housing Code Section 503(b) (every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two). Different rules apply in the case of "efficiency units." (See Uniform Housing Code Section 503(b), Health and Safety Code Section 17598.1.)*

- The name, address, and telephone number of the credit reporting service; and
- A statement that you have the right to obtain a free copy of the credit report from the credit reporting service that prepared it.[19]

If the landlord refuses to rent to you based on your credit report, it's a good idea to get a free copy of your credit report and to correct any erroneous **items of information** in it.[20] Erroneous items of information in your credit report may cause other landlords to refuse to rent to you also.

Also, if you know what your credit report says, you may be able to explain any problems when you fill out the rental application. For example, if you know that your credit report says that you never paid a bill, you can provide a copy of the canceled check to show the landlord that you did pay it.

Application Screening Fee

When you submit a rental application, the landlord may charge you an application screening fee. The landlord may charge up to $30, and may use the fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining a credit report on you.[21]

The application fee cannot legally be more than the landlord's actual out-of-pocket costs, and can never be more than $30. The landlord must give you a receipt that itemizes his or her out-of-pocket expenses in obtaining and processing the information about you. The landlord must return any unused portion of the fee (for example, if the landlord does not check your references).

If the landlord obtains your credit report, the landlord must give you a copy of the report if you request it. As explained in the section on "Credit Checks," it's a good idea to get a copy of your credit report from the landlord so that you know what's being reported about you.

Before you pay the application screening fee, ask the landlord the following questions about it:

- How long will it take the landlord to get a copy of your credit report? How long will it take the landlord to review the credit report and decide whether to rent to you?
- Is the fee refundable if the credit check takes too long and you're forced to rent another place?
- If you already have a current copy of your credit report, will the landlord accept it and either reduce the fee or not charge it at all?

If you don't like the landlord's policy on application screening fees, you may want to look for another rental unit. If you decide to pay the application screening fee, any agreement regarding a refund should be in writing.

Holding Deposit

Sometimes, the tenant and the landlord will agree that the tenant will rent the unit, but the tenant cannot move in immediately. In this situation, the landlord may ask the tenant for a **holding deposit**. A holding deposit is a deposit to hold the rental unit for a stated period of time until the tenant pays the first month's rent and any security deposit. During this period, the landlord agrees not to rent the unit to anyone else. If the tenant changes his or her mind about moving in, the landlord may keep at least some of the holding deposit.

Ask the following questions before you pay a holding deposit:

- Will the deposit be applied to the first month's rent? If so, ask the landlord for a deposit receipt stating this. Applying the deposit to the first month's rent is a common practice.
- Is any part of the holding deposit refundable if you change your mind about renting? As a general rule, if you change your mind, the landlord can keep some—

[18] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 9/22 (NOLO Press 1996).*

[19] *Consumer Credit Reporting Agencies Act, Civil Code Sections 1785.1-1785.35 and Section 1785.20(a); Investigative Consumer Reporting Agencies Act, Civil Code Sections 1786-1786.56. In order to receive a free copy of your credit report, you must request it within* 60 days *after receiving the notice of denial.*

[20] *Civil Code Section 1785.16.*

[21] *Civil Code Section 1950.6.*

and perhaps all—of your holding deposit. The amount that the landlord can keep depends on the costs that the landlord has incurred because you changed your mind—for example, additional advertising costs and lost rent.

You may also lose your deposit even if the reason you can't rent is not your fault—for example, if you lose your job and become unable to afford the rental unit.

If you and the landlord agree that all or part of the deposit will be refunded to you in the event that you change your mind or can't move in, make sure that the written receipt clearly states your agreement.

A holding deposit merely guarantees that the landlord will not rent the unit to another person for a stated period of time. The holding deposit doesn't give the tenant the right to move into the rental unit. The tenant must first pay the first month's rent and all other required deposits within the holding period. Otherwise, the landlord can rent the unit to another person and keep all or part of the holding deposit.

Suppose that the landlord rents to somebody else during the period for which you've paid a holding deposit, and you are still willing and able to move in. The landlord should, at a minimum, return the entire holding deposit to you. You may also want to talk with an attorney, legal aid organization, tenant-landlord program, or housing clinic about whether the landlord may be responsible for other costs that you may incur because of the loss of the rental unit.

If you give the landlord a holding deposit when you submit the rental application, but the landlord does not accept you as a tenant, the landlord must return your entire holding deposit to you.

Unlawful Discrimination

What is unlawful discrimination?

The dictionary defines "discrimination" as a difference in favor or treatment not based on individual merit. It is unlawful for a landlord to refuse to rent to a tenant or to engage in any other type of **discrimination** on the basis of group characteristics specified by law (such as race or religion) that are not closely related to the business needs of the landlord.[22]

Under California law, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against a person because of the person's race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.[23] California law also prohibits discrimination because of a person's mental or physical disability, or because of personal characteristics, such as a person's physical appearance or sexual orientation, that are unrelated to the responsibilities of a tenant.[24]

It is illegal for landlords to discriminate against families with children. However, housing for senior citizens may exclude families with children. "Housing for senior citizens" includes housing in which all of the occupants are 62 years old or older,[25] or, in a large metropolitan area, a complex of 70 or more units for persons 55 years old or older.[26]

Limited exceptions for single rooms and roommates

If the owner of an owner-occupied, single-family home rents out a single room in the home to a roomer or a boarder, and there are no other roomers or boarders living in the household, the owner is not subject to the restrictions listed under "Examples of unlawful discrimination" on page 9. However, the owner cannot make oral or written statements, or use notices or advertisements which indicate any preference, limitation, or discrimination based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.[27]

A person in a single-family dwelling who advertises for a roommate may express a preference on the basis of gender, if living areas (such as the kitchen, living room, or bathroom) will be shared by the roommate.[28]

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[22] *For example, the landlord may properly require that a prospective tenant have an acceptable credit history and be able to pay the security deposit, and have verifiable credit references and a good history of paying rent on time. (See Moskovitz and Warner, Tenants' Rights, page 5/4 [NOLO Press 1996]).*

[23] *Government Code Sections 12927(e), 12955. See Fair Employment and Housing Act, Government Code Section 12900 and following; federal Fair Housing Act, 42 United States Code Section 3601 and following.*

[24] *Civil Code Sections 51, 51.2, 53; Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

[25] *42 United States Code Section 3607.*

[26] *Civil Code Section 51.3. "Housing for senior citizens" also includes a complex for persons 55 years or older*

Examples of Unlawful Discrimination

Unlawful housing discrimination can take a variety of forms. Under California's Fair Employment and Housing Act, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against any person because of the person's race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability in any of the following ways:

- Refusing to sell, rent, or lease.
- Refusing to negotiate for a sale, rental, or lease.
- Representing that housing is not available for inspection, sale, or rental when it is, in fact, available.
- Otherwise denying or withholding housing accommodations.
- Providing inferior housing terms, conditions, privileges, facilities, or services.
- Canceling or terminating a sale or rental agreement.
- Providing segregated or separated housing accommodations.
- Refusing to permit a disabled person, at the disabled person's own expense, to make reasonable modifications to a rental unit that are necessary to allow the disabled person "full enjoyment of the premises." As a condition of making the modifications, the landlord may require the disabled person to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy (excluding reasonable wear and tear).
- Refusing to make reasonable accommodations in rules, policies, practices, or services when necessary to allow a disabled person "equal opportunity to use and enjoy a dwelling."[29]

containing at least 150 units built after January 1, 1996 in large metropolitan areas, at least 100 such units in smaller metropolitan areas, and at least 35 such units in rural areas.

Resolving housing discrimination problems

If you are a victim of housing discrimination (for example, if a landlord refuses to rent to you because of your race or national origin), you may have several legal remedies, including:

- Compensation for the actual damages that you suffered.
- Admission to the housing you want, or similar housing.
- Reimbursement for the expenses that you incurred to find other housing.
- Damages that you suffered and are able to prove, in addition to actual expenses.
- Attorney's fees.

Sometimes, a court may order the landlord to take specific action to stop unlawful discrimination. For example, the landlord may be ordered to advertise vacancies in newspapers published by ethnic minority groups, or to place fair housing posters in the rental office.

A number of resources are available to help resolve housing discrimination problems:

- Local **fair housing organizations** (often known as fair housing councils). Look in the white pages of the phone book.
- Local California apartment association chapters. Look in the white pages of the phone book.
- Local government agencies. Look in the phone book under *City* or *County Government Offices*, or call the offices of local elected officials (for example, your city council representative or your county supervisor).
- The **California Department of Fair Employment and Housing** investigates housing discrimination complaints (but *not* other kinds of landlord-tenant problems). The department's Housing Enforcement Unit can be reached at 1-800-233-3212.
- The **U.S. Department of Housing and Urban Development** (HUD) enforces the federal fair housing law, which prohibits discrimination based on sex, race, religion, national or ethnic origin, familial status, or mental handicap. To contact HUD, look in the phone book under *United States Government Offices*.

[27] *Government Code Sections 12927(c)(2)(A), 12955(c).*

[28] *Government Code Section 12927(c)(2)(B).*

[29] *Government Code Sections 12927(c)(1), 12955.*

- **Legal aid organizations** provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. Legal aid organizations are located throughout the state. Look in the yellow pages of the phone book under *Attorneys*.
- Private attorneys. You may be able to hire a private attorney to take legal action against a landlord who has discriminated against you. For the names of attorneys who specialize in housing discrimination cases, call your county bar association or an attorney referral service.

If you believe that a landlord who has refused to rent to you has unlawfully discriminated against you, you must act quickly. The time limits for filing housing discrimination complaints are short. First, write down what happened, including dates and the names of those involved. Then, contact one of the resources listed above for advice and help.

BEFORE YOU AGREE TO RENT

Before you decide on a rental unit, there are several other points to consider. For example: Is an oral rental agreement legally binding? What are the differences between a lease and a rental agreement? What are some of the advantages and disadvantages of each? These and other questions are answered in this section.

Rental Agreements and Leases

General information

Before you can rent a unit, you and the landlord must enter into one of two kinds of agreements: a **periodic rental agreement** or a **lease.** The periodic rental agreement or lease creates the tenant's right to live in the **rental unit.** The tenant's right to use and possess the landlord's rental unit is called a **tenancy**.

A periodic rental agreement states the length of time between the rent payments—for example, a week or a month. However, a periodic rental agreement does not state the total number of weeks or months that the agreement will be in effect.

A periodic rental agreement that requires one rent payment each month is a "month-to-month" rental agreement, and the tenancy is a "month-to-month" tenancy.[30] If the periodic rental agreement requires that rent be paid once a week, it is a "week-to-week" rental agreement, and the tenancy is a "week-to-week" tenancy.[31] In effect, the rental agreement expires at the end of each period for which the tenant has paid rent, and is renewed by the next rent payment. The tenant can continue to live in the rental unit as long the tenant continues to pay the rent, and as long as the landlord does not ask the tenant to leave.

In a periodic rental agreement, the period between rent payments determines three things:

- How often the tenant must pay rent;
- How much notice the tenant must give the landlord if the tenant decides to leave; and
- How much notice the landlord must give the tenant if the landlord decides to raise the rent, change other terms of the rental agreement, or not renew the rental agreement.[32]

Oral rental agreements

In an oral rental agreement, you and the landlord agree orally (not in writing) that you will rent the rental unit. In addition, you agree to pay a specified rent for a specified period of time—for example, a week or a month. This kind of rental agreement is legally binding on both you and the landlord, even though it is not in writing. However, if you have a disagreement with your landlord, you will have no written proof of the terms of your rental agreement. Therefore, it's usually best to have a written rental agreement.

It's especially important to have a written rental agreement if your tenancy involves special circumstances, such as any of the following:

- You plan to live in the unit for a long time (for example, nine months or a year);

[30] *Civil Code Section 1944.*
[31] *Civil Code Section 1944.*
[32] *Civil Code Section 1946.*

- Your landlord has agreed to your having a pet or water-filled furniture (such as a waterbed); or
- The landlord has agreed to pay any expenses (for example, utilities or garbage removal) or to provide any services (for example, a gardener).

Any time that a tenant and a landlord agree to the lease of a rental unit for more than one year, *the agreement must be in writing*.[33] If such an agreement is not in writing, it is not enforceable.

Written rental agreements

A written rental agreement is a periodic rental agreement that has been put in writing. The written rental agreement specifies all the terms of the agreement between you and the landlord—for example, it states the rent, the length of time between rent payments (the **rental period**), and the landlord's and your obligations. It may also contain clauses on pets, late fees, and length of notice.

A written rental agreement does not state the total number of months or weeks that the rental agreement will be in effect. The month-to-month rental agreement is by far the most common kind of written rental agreement, although longer or shorter rental periods (for example, week-to-week) can be specified.

The length of time between rent payments is important. It determines the amount of advance notice that the landlord must give you before raising the rent, changing other terms of the tenancy, or lawfully ending the rental agreement. The length of time between rent payments also determines how much advance notice *you* must give to the *landlord* before you move out of the rental unit.

For example, under a month-to-month rental agreement, both the tenant and the landlord must give at least thirty days' advance written notice to end the rental agreement, and the landlord is required to give the tenant thirty days' advance written notice of any increase in the rent. A week-to-week rental agreement can be ended, or the rent raised, by seven days' advance written notice.

The required notice period cannot be shorter than the length of time between the rent payments, *unless* the landlord and tenant have specifically agreed, in writing, to a shorter period. For example, the landlord and tenant might agree to a 10-day notice period in a month-to-month rental agreement. The notice period can *never* be fewer than seven days,[34] unless the landlord has a lawful reason to give the tenant a three-day eviction notice (see pages 36-37).

Leases

A lease states the total number of months that the lease will be in effect—for example, 6 or 12 months. Most leases are in writing, although oral leases are legal. If the lease is for more than one year, it *must* be in writing.[35]

It is important to understand that, even though the lease requires the rent to be paid monthly, you are bound by the lease until it expires (for example, at the end of 12 months). This means that you must pay the rent and perform all of your obligations under the lease during the entire lease period.[36]

There are some advantages to having a lease. If you have a lease, the landlord cannot raise your rent while the lease is in effect, unless the lease expressly allows rent increases. Also, the landlord cannot evict you during the period of the lease, except for reasons such as your damaging the property or failing to pay rent.

A lease gives the tenant the security of a long-term agreement at a known cost. Even if the lease allows rent increases, the lease should specify a limit on how much and how often the rent can be raised.

The disadvantage of a lease is that if you need to move, a lease may be difficult for you to break, especially if another tenant can't be found to take over your lease. If you move before the lease ends, the landlord may have a claim against you for the rent for the rest of the lease period.

Before signing a lease, you may want to talk with an attorney, legal aid organization, housing clinic, or tenant-landlord program to make sure that you understand all of the lease's terms, your obligations, and any risks that you may face.

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[33] *Civil Code Sections 1091, 1624(c).*

[34] *Civil Code Section 1946.*

[35] *Civil Code Sections 1091, 1624(c).*

[36] *However, the tenant's obligation to pay rent depends on the landlord's living up to his or her obligations under the* ***implied warranty of habitability.*** *See discussion of "Repairs and Habitability" (pages 20-23) and "Having Repairs Made" (pages 23-28).*

Shared Utility Meters

Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose to you that utility meters are shared *before* you sign the rental agreement or lease.[37] If you become a tenant, the landlord must reach an agreement with you about who will pay for the shared utilities (see page 14).

Spanish-Language Translation of Proposed Rental Agreement

A landlord who negotiates primarily in Spanish for the rental, lease, or sublease of a rental unit must give the tenant a written, Spanish-language translation of the proposed lease or rental agreement *before* the tenant signs it.[38] This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less.

The landlord must give the tenant the Spanish-language translation whether or not the tenant requests the translation. It is never sufficient for the landlord to give the Spanish-language translation to the tenant *after* the tenant has signed the rental agreement.

However, the landlord is not required to give the tenant a Spanish-language translation of the rental agreement if all of the following are true:

- The Spanish-speaking tenant negotiated the rental agreement through his or her own interpreter;
- The tenant's interpreter is able to speak fluently and read with full understanding *both* English and Spanish;
- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through the landlord.

If a landlord who is required to provide a Spanish-language translation of a lease or rental agreement fails to do so, the tenant can rescind (cancel) the agreement.[39]

WHEN YOU HAVE DECIDED TO RENT

Before you sign a rental agreement or a lease, read it carefully so that you understand all of its terms. What kind of terms should be in the rental agreement or lease? Can the rental agreement or lease limit the basic rights that the law gives to all tenants? How much can the landlord require you to pay as a security deposit? This section answers these and other questions.

What the Rental Agreement or Lease Should Include

Most landlords use printed forms for their leases and rental agreements. However, printed forms may differ from each other. *There is no "standard rental agreement" or "standard lease"!* Therefore, carefully read and understand the entire document before you sign it.

The written rental agreement or lease should contain all of the promises that the landlord or the landlord's agent has made to you, and should not contain anything that contradicts what the landlord or the agent told you. If the lease or rental agreement refers to another document, such as "tenant rules and regulations," get a copy and read it before you sign the written agreement.

Don't feel rushed into signing. Make sure that you understand everything that you're agreeing to by signing the rental agreement or lease. If you don't understand something, ask the landlord to explain it to you. If you still don't understand, discuss the agreement with a friend, or with an attorney, legal aid organization, tenant-landlord program, or housing clinic.

Key terms

The written rental agreement or lease should contain key terms, such as the following:

- The names of the landlord and the tenant.
- The address of the rental unit.
- The amount of the rent.
- When the rent is due, to whom it is to be paid, and where it is to be paid.

[37] *Civil Code Section 1940.9.*

[38] *Civil Code Section 1632. The purpose of this law is to ensure that the Spanish-speaking person has a genuine opportunity to read the Spanish-language translation of the proposed agreement that has been negotiated primarily in Spanish, and to consult with others,* before *the agreement is signed.*

- The amount and purpose of the security deposit (see page 14).
- The amount of any late charge or returned check fee (see page 17).
- Whether pets are allowed.
- The number of people allowed to live in the rental unit.
- Whether attorney's fees can be collected from the losing party in the event of a lawsuit between you and the landlord.
- Who is responsible for paying utilities (gas, electric, water, and trash collection).
- If the rental is a house or a duplex with a yard, who is responsible for taking care of the yard.
- Any promises by the landlord to make repairs, including the date by which the repairs will be completed.
- The name and address of the authorized manager of the rental property and an owner (or an agent of the owner) who is authorized to receive legal notices for the owner. This information can be posted conspicuously in the building instead of being disclosed in the rental agreement or lease.[40]
- Other items, such as whether you can sublet the rental unit (see page 19) and the conditions under which the landlord can inspect the unit (see page 19).

A rental agreement or lease may contain other terms. Examples include whether you must park your car in a certain place, and whether you must obtain permission from the landlord before having a party.

It is important that you understand all of the terms of your rental agreement or lease. If you don't comply with them, the landlord may have grounds to evict you.

Don't sign a rental agreement or a lease if you think that its terms are unfair. If a term doesn't fit your needs, try to negotiate a more suitable term (for example, a smaller security deposit or a lower late fee). It's important that any agreed-upon change in terms be included in the rental agreement or lease that both you and the landlord sign. If you and the landlord agree to change a term, the change can be made in handwriting in the rental agreement or lease. Both of you should then initial or sign in the area immediately next to the change to show your approval of the change. Or, the document can be retyped with the new term included in it.

If you don't agree with a term in the rental agreement or lease, and can't negotiate a better term, carefully consider the importance of the term, and decide whether or not you want to sign the document.

Always get a copy of the complete rental agreement or lease after you *and* the landlord have signed it. Keep the document in a safe place.

Tenant's basic legal rights

Tenants have basic legal rights that are always present, no matter what the rental agreement or lease states. These rights include all of the following:

- Limits on the amount of the security deposit that the landlord can require you to pay (see page 14).
- Limits on the landlord's right to enter the rental unit (see page 19).
- The right to a refund of the security deposit, or a written accounting of how it was used, after you move (see page 30).
- The right to sue the landlord for violations of the law or your rental agreement or lease.
- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances (see page 23).
- The right to withhold rent under appropriate circumstances (see page 25).
- Rights under the warranty of habitability (see pages 20-22).
- Protection against retaliatory eviction (see page 42).

These and other rights will be discussed throughout the rest of this booklet.

[39] *Civil Code Section 1632(g). See Civil Code Section 1688 and following on rescission of contracts.*

[40] *Civil Code Sections 1961-1962.7. See Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont. Ed. Bar 1997).*

Landlord's and tenant's duty of good faith and fair dealing

Every rental agreement and lease requires that the landlord and tenant deal with each other fairly and in good faith. Essentially, this means that both the landlord and the tenant must treat each other honestly and reasonably. This duty of good faith and fair dealing is implied by law in every rental agreement and every lease, even though the duty probably is not expressly stated.

Shared utilities

If the utility meter for your rental unit is shared with another unit or another part of the building (see page 12), then the landlord must reach an agreement with you on who will pay for the shared utilities. This agreement must be in writing (it can be part of the rental agreement or lease), and can consist of one of the following options:

- The landlord can pay for the utilities provided through the meter for your rental unit by placing the utilities in the landlord's name;
- The landlord can have the utilities in the area outside your rental unit put on a separate meter in the landlord's name; or
- You can agree to pay for the utilities provided through the meter for your rental unit to areas outside your rental unit.[41]

Basic Rules Governing Security Deposits

A **security deposit** is a deposit or a fee that the landlord requires the tenant to pay at the beginning of the tenancy. The security deposit protects the landlord—for example, if the tenant moves out owing rent, or leaves the rental unit damaged or less clean than when the tenant moved in. Under California law, a security deposit cannot be labeled "nonrefundable."[42]

Almost all landlords charge tenants a security deposit. The security deposit may be called "last month's rent," "security deposit," "pet deposit," "key deposit," or "cleaning deposit." The security deposit may combine the last month's rent plus a specific amount for security. No matter what these fees are called, the law considers all of them, as well as any other payment, deposit, or charge, to be part of the security deposit.[43] There are two exceptions to this general rule: the first month's rent and an application screening fee (see page 7) are not part of the security deposit.[44]

No matter what the security deposit is called, the law limits the total amount that the landlord can require you to pay as a security deposit.[45] The total amount required for *any* type of security deposit cannot be more than the amount of *two months' rent* for an *unfurnished* rental unit, or *three months' rent* for a *furnished* unit. However, if you have a waterbed, the total amount of the security deposit can be up to two-and-a-half times the monthly rent if the unit is unfurnished, and up to three-and-a-half times the monthly rent if the unit is furnished, plus a reasonable fee to cover the landlord's administrative costs.[46]

The landlord can require you to pay a security deposit *plus* your first month's rent before you move in. Example: Suppose that you have agreed to rent an unfurnished apartment for $500 a month. Before you move in, the landlord can require you to pay up to two times the amount of the monthly rent as a security deposit ($500 x 2 = $1,000). The landlord cannot also charge you a $200 cleaning deposit and a $15 key deposit, because the total of all the deposits ($1,215) would be more than the $1,000 limit. The landlord *can* require you to pay the first month's rent ($500) in addition to the $1,000 security deposit.

If you and the landlord agree that the landlord will make structural, decorative, or furnishing alterations that you have requested and agreed to pay for, the amount that you pay for these alterations is *not* part of the security deposit. However, if the alterations that you request involve cleaning or repairing damage

[41] *Civil Code Section 1940.9. This section also provides remedies for violations.*

[42] *Civil Code Section 1950.5(l).*

[43] *Civil Code Section 1950.5(b).*

[44] *Civil Code Sections 1950.6(a),(b),(j).*

[45] *Civil Code Section 1950.5(c). These limitations do not apply to long-term leases of at least six months, in which advance payment of six months' rent (or more) may be charged.*

[46] *Civil Code Section 1940.5(g).*

caused by a previous tenant, this additional amount *would* be part of the security deposit.[47]

Although a security deposit cannot be "nonrefundable,"[48] the law allows the landlord to keep part or all of the security deposit under certain circumstances. Examples include a tenant moving out and still owing rent, or leaving the rental unit in a damaged condition. Deductions from security deposits are discussed in detail on pages 30-33.

Because you normally are entitled to a refund of your security deposit when you move out, make sure that your rental agreement or lease clearly states that you have paid a security deposit to the landlord, and accurately shows how much you have paid. The rental agreement or lease should also describe the circumstances under which the landlord can keep part or all of the security deposit. Most landlords will also give you a written receipt for all amounts that you pay as a security deposit. Keep your rental agreement or lease and the receipt in case of a dispute.

Alterations to Accommodate a Disabled Tenant

A landlord must allow a disabled tenant to make *reasonable* modifications to the rental unit to the extent necessary to allow the tenant "full enjoyment of the premises."[49] The *tenant* must pay for the modifications. As a condition of making the modifications, the landlord may require the tenant to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy. The landlord cannot require an additional security deposit in this situation. However, the landlord and tenant may agree, as part of the tenant's agreement to restore the rental unit, that the tenant will pay a "reasonable estimate" of the restoration cost into an **escrow account**.[50]

The Inventory Checklist

You and the landlord should fill out the Inventory Checklist on pages 61-62 (or one like it). It's best to do this before you move in, but it can be done two or three days later, if necessary. You and the landlord should walk through the rental unit together and note the condition of the items included in the checklist in the "Condition Upon Arrival" section. Both of you should sign and date the form, and both of you should keep a copy. Carefully completing the form at the beginning of the tenancy will help avoid disagreements about the condition of the unit when you move out. See additional suggestions about the Inventory Checklist on page 61.

Renter's Insurance

Renter's insurance protects tenants against property losses, such as losses from theft or fire. It also protects tenants against liability (legal responsibility) for many claims or lawsuits filed by the landlord or others, alleging that the tenant has negligently (carelessly) injured another person or damaged the person's property.

Carelessly causing a fire that destroys the rental unit or another tenant's property is an example of **negligence** for which you could be held legally responsible.[51] You could be required to pay for the losses that the landlord or other tenant suffers. Renter's insurance would pay the other party on your behalf for some or all of these losses. For that reason, it's often a good idea to purchase renter's insurance.

Renter's insurance may not be available in every area. If it is available, and if you choose to purchase it, compare prices carefully and check with more than one insurance company. The price and type of coverage may differ widely between insurance companies. The price will also depend on how much protection you decide to purchase.

Your landlord probably has insurance that covers the rental unit or dwelling, but you

[47] *Civil Code Section 1950.5(c).*
[48] *Civil Code Section 1950.5(l).*
[49] *Civil Code Section 54.1(b)(3)(A).*
[50] *Civil Code Section 54.1(b)(3)(A).*
[51] *In general, every person is responsible for damages sustained by someone else as a result of the person's carelessness. (Civil Code Section 1714.)*

shouldn't assume that the landlord's insurance will protect you. If the landlord's insurance company pays the landlord for a loss that you cause, the insurance company may then sue *you* to recover what it has paid the landlord.

If you want to use a waterbed, the landlord can require you to have a waterbed insurance policy to cover possible property damage.[52]

Rent Control

Some California cities have local ordinances, called **rent control ordinances**, that limit or prohibit rent increases. Some of these ordinances specify procedures that a landlord must follow before increasing a tenant's rent, or that make evicting a tenant more difficult for a landlord. Each community's ordinance is different.

For example, some ordinances allow landlords to evict tenants only for "just cause." Under these ordinances, the landlord must state and prove a valid reason for terminating a month-to-month tenancy. Other cities don't have this requirement.

Some cities have boards that have the power to approve or deny increases in rent. Other cities' ordinances allow a certain percentage increase in rent each year. Some cities have "vacancy control." This means that the landlord cannot raise the rent when the tenant leaves the rental unit.[53] Other cities have "vacancy decontrol." This means that the landlord can rerent a unit at the market rate when the tenant moves out voluntarily or when the tenancy is terminated for "just cause."

Some ordinances make it more difficult for owners to convert rentals into condominiums.

A rent control ordinance may change the landlord-tenant relationship in other important ways besides those described here. Find out if you live in a city with rent control. (See the list of cities with rent control on page 50.) Contact your local housing officials or rent control board for information. You can find out about the rent control ordinance in your area (if there is one) at your local law library, or by requesting a copy of your local ordinance from the city or county clerk's office.

LIVING IN THE RENTAL UNIT

As a **tenant,** you must take reasonable care of your **rental unit** and any common areas that you use. You must also repair all damages that you cause, or that are caused by anyone for whom you are responsible, such as your family, guests, or pets.[54] These important tenant responsibilities are discussed in more detail under "Dealing with Problems," page 20.

This section discusses other issues that can come up while you're living in the rental unit. For example, can the **landlord** enter the rental unit without notifying you? Can the landlord raise the rent even if you have a **lease?** What can you do if you have to move before the end of the lease?

Paying the Rent

When is rent due?

Most **rental agreements** and leases require that rent be paid at the beginning of each **rental period.** For example, in a month-to-month tenancy, rent usually must be paid on the first day of the month. However, your lease or rental agreement can specify any day of the month as the day that rent is due (for example, the 10th of every month in a month-to-month rental agreement, or every Tuesday in a week-to-week rental agreement).

It's very important for you to pay your rent on the day it's due. Not paying on time might lead to a negative **credit report,** late fees (see page 17), and even eviction (see page 35).

Obtaining receipts for rent payments

If you pay your rent in cash or with a money order, it's a good idea to ask your landlord for a receipt. Legally, you are entitled to a written receipt whenever you pay your rent.[55] If you pay with a check, you can use the canceled check as a receipt. Keep the receipts or canceled checks so that you will have records of your payments in case of a dispute.

[52] *Civil Code Section 1940.5(a).*

[53] *A recent state law phases out vacancy control ordinances during the period from January 1, 1996 to January 1, 1999. (Civil Code Sections 1954.50-1954.36.)*

[54] *Civil Code Sections 1929, 1941.2.*

[55] *Civil Code Section 1499.*

[56] *Civil Code Section 1719(a)(1). Advance disclosure of the amount of the service charge is a nearly universal*

Late fees and dishonored check fees

A landlord can charge a late fee to a tenant who doesn't pay rent on time. However, a landlord can do this only if the lease or rental agreement contains a late fee provision. In some communities, late fees are limited by local **rent control ordinances.** (See "Rent Control," page 16.)

Late fees must be reasonably related to the costs that your landlord faces as a result of your rent payment being late. A properly set late fee is legally valid. However, a late fee that is so high that it amounts to a penalty is not legally valid.

What if you've signed a lease or rental agreement that contains a late fee provision, and you're going to be late for the first time paying your rent? If you have a good reason for being late (for example, your paycheck was late), explain this to your landlord. Some landlords will **waive** (forgive) the late fee if there is a good reason for the rent being late, and if the tenant has been responsible in other ways. If the landlord isn't willing to forgive or lower the late fee, ask the landlord to justify it (for example, in terms of administrative costs for processing the payment late). However, if the late fee is reasonable, it probably is valid; you will have to pay it if your rent payment is late, and if the landlord insists.

The landlord also can charge the tenant a fee if the tenant's check for the rent (or any other payment) is dishonored by the tenant's bank. (A dishonored check is often called a "bounced" or "returned" check.) In order for the landlord to charge the tenant a returned check fee, the lease or rental agreement must authorize the fee, and the amount of the fee must be reasonable.

For example, a reasonable returned check fee would be the amount that the bank charges the landlord, plus the landlord's reasonable costs because the check was returned. Under the Civil Code's "bad check" provisions, the landlord can charge a *service charge* instead of the dishonored check fee described in this paragraph. The service charge can be up to $25 for the first check that is returned for insufficient funds, and up to $35 for each additional check.[56]

Partial rent payments

You will violate your lease or rental agreement if you don't pay the full amount of your rent on time. If you can't pay the full amount on time, you may want to offer to pay part of the rent. However, the law allows your landlord to take the partial payment *and* still give you an **eviction notice.**[57]

If your landlord is willing to accept a partial rent payment and give you extra time to pay the balance, it's important that you and the landlord agree on the details in writing. The written agreement should state the amount of rent that you have paid, the date by which the rest of the rent must be paid, the amount of any late fee that is due, and the landlord's agreement not to evict you if you pay the amount due by that date. Both you and the landlord should sign the agreement, and you should keep a copy. Such an agreement is legally binding.

Security Deposit Increases

Whether the landlord can increase the amount of the **security deposit** after you move in depends on what the lease or rental agreement says, and how much of a security deposit you have paid already.

If you have a lease, the security deposit cannot be increased unless increases are permitted by the terms of the lease.

In a periodic rental agreement (for example, a month-to-month agreement), the landlord can increase the security deposit unless this is prohibited by the agreement. The landlord must give you proper notice before increasing the security deposit. (For example, 30 days' advance written notice normally is required in a month-to-month rental agreement.)

However, if the amount that you have already paid as a security deposit equals two times the current monthly rent (for an unfurnished unit) or three times the current monthly rent (for a furnished unit), then your landlord *can't* increase the security deposit, no matter what the rental agreement says. (These limits are higher if you have a waterbed; see page 14.)

practice, but is not explicitly required by Section 1719. The landlord cannot collect both a dishonored check fee and a service charge. The landlord loses the right to collect the service charge if the landlord seeks the treble damages that are authorized by the "bad check" law. (Civil Code Section 1719; see 3 Consumer Law Sourcebook [Department of Consumer Affairs 1996] Sections 28.12-28.47.)

[57] *See Civil Code Section 1161 paragraph 2.*

Local **rent control ordinances** may also limit increases in security deposits.

The landlord must give you advance written notice of any increase in the security deposit. The landlord must follow the same notice procedures as those required for notice of a rent increase.[58] (See "Rent Increases" below; see "Proper Service of Notices," page 37.)

Rent Increases

How often can rent be raised?

If you have a lease, your rent cannot be increased during the term of the lease, unless the lease allows rent increases.

If you have a periodic rental agreement, your landlord can increase your rent, but the landlord must give you proper advance notice in writing. The written notice tells you how much the increased rent is and when the increase goes into effect.

The amount of advance notice must be *at least* as long as the period of time between your rent payments, unless you've agreed to a shorter notice period in your rental agreement. For example, in a month-to-month tenancy, the landlord must give you at least 30 days' advance written notice before the rent increase takes effect (unless you've agreed to a shorter notice period). If you pay rent every week, a seven-day advance written notice is required. A notice of rent increase *must always be at least seven days.*[59] Normally in the case of a periodic rental agreement, the landlord can increase the rent as often as the landlord likes. However, the landlord must give proper advance notice of the increase, and the increase cannot be **retaliatory** (see page 42). Local rent control ordinances may impose additional requirements on the landlord.

Increases in rent for government-financed housing usually are restricted. If you live in government-financed housing, check with the local public housing authority to find out whether there are any restrictions on rent increases.

Landlord's notice of rent increase

A landlord's notice of a rent increase (or any change in the terms of the rental agreement) must be in writing and must be served by one of the methods described in "Proper Service of Notices," page 37.[60]

Example of a rent increase

Most notices of rent increase state that the increase will go into effect at the beginning of the rental period. For example, a landlord who wishes to increase the rent on a month-to-month rental effective on October 1 must see to it that the tenant receives the notice by September 1. However, a landlord can make the increase effective at any time in the month *if* proper advance notice is given.

If the increase in the rent becomes effective in the middle of the rental period, the landlord is entitled to receive the increased rent for only the last half of the rental period. For example:

- Rental period: month-to-month, from the first day of the month to the last day of the month.
- Rent: $500 per month.
- Rent increase: $100 (from $500 to $600) per month.
- Date that tenant receives the notice of rent increase: April 15 (that is, the middle of the month).
- Earliest date that the rent increase can take effect: May 15.

If the landlord delivers the notice on April 15, the increase becomes effective one month later, on May 15. The landlord is entitled to the increased rent beginning on May 15. On May 1, the tenant would pay $250 for the first half of May (that is, 15 days at the old rent of $500), plus $300 for the last half of May (that is, 15 days at the new rent of $600). The total rent for May would be $550. Looking at it another way, the landlord is entitled to only one-half of the increase in the rent during May, since the notice of rent increase became effective in the middle of the month.

[58] *Civil Code Section 827.*

[59] *Civil Code Section 827.*

[60] *See Civil Code Section 827, Code of Civil Procedure Section 1162.*

Of course, the landlord could deliver a notice of rent increase on April 15 which states that the rent increase takes effect on June 1. In that case, the tenant would pay $500 rent on May 1, and $600 rent on June 1.

When Can the Landlord Enter the Rental Unit?

California law states that a landlord can enter a rental unit only for the following reasons:[61]

- In an emergency.
- When the tenant has moved out or has abandoned the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements.
- To show the rental unit to prospective tenants, buyers, or lenders, or to provide entry to contractors or workers who are to perform work on the unit.
- If a court order permits the landlord to enter.

Except in the first two situations above (emergencies and **abandonment),** the landlord must give the tenant reasonable advance notice before entering the rental unit, and can enter only during normal business hours (generally, 8:00 AM to 5:00 PM on weekdays).

The law considers 24 hours' advance notice to be reasonable in most situations. The tenant can consent to shorter notice and to entry at other times. Also, the landlord can give less than 24 hours' notice when it is "impracticable" to give 24 hours' notice (for example, the landlord tries to reach the tenant 24 hours in advance, but the tenant doesn't return the call).

The landlord cannot abuse the right of access under these rules, or use this right to harass (repeatedly disturb) the tenant.

If your landlord violates these access rules, talk to the landlord about your concerns. If that is not successful in stopping the landlord's misconduct, send the landlord a formal letter asking the landlord to strictly observe the access rules stated above. If the landlord continues to violate these rules, you can talk to an attorney or a legal aid organization, or file suit in small claims court to recover damages that you have suffered due to the landlord's misconduct.

Subleases and Assignments

Sometimes, a tenant with a lease may need to move out before the lease ends, or may need help paying the rent. In these situations, the tenant may want to **sublease** the rental unit or **assign** the lease to another tenant. However, the tenant cannot sublease the rental unit or assign the lease *unless* the terms of the lease allow the tenant to do so.

Subleases

A **sublease** is a separate rental agreement between the original tenant and a new tenant who moves in temporarily (for example, for the summer), or who moves in with the original tenant and shares the rent. The new tenant is called a **"subtenant."**

With a sublease, the agreement between the original tenant and the landlord remains in force. The original tenant is still responsible for paying the rent to the landlord, and functions as a landlord to the subtenant. Any sublease agreement between a tenant and a subtenant should be in writing.

Most rental agreements and leases contain a provision that prohibits (prevents) tenants from subleasing or assigning rental units. This kind of provision allows the landlord to control who rents the rental unit. If your rental agreement or lease prohibits subleases or assignments, you must get your landlord's permission before you sublease or assign the rental unit.

Even if your rental agreement doesn't contain a provision that prohibits you from subleasing or assigning, it's wise to discuss your plans with your landlord in advance. Subleases and assignments usually don't work out smoothly unless everyone has agreed in advance.

You might use a sublease in two situations. In the first situation, you may have a larger apartment or house than you need, and may

[61] *Civil Code Section 1954.*

want help paying the rent. Therefore, you want to rent a room to someone. In the second situation, you may want to leave the rental unit for a certain period and return to it later. For example, you may be a college student who leaves the campus area for the summer and returns in the fall. You may want to sublease to a subtenant who will agree to use the rental unit only for that period of time.

Under a sublease agreement, the subtenant agrees to make payments to you, not to the landlord. The subtenant has no direct responsibility to the landlord, only to you. The subtenant has no greater rights than you do as the original tenant. For example, if you have a month-to-month rental agreement, so does the subtenant. If your rental agreement does not allow you to have a pet, then the subtenant cannot have a pet.

In any sublease situation, it's essential that both you and the subtenant have a clear understanding of both of your obligations. To help avoid disputes between you and the subtenant, this understanding should be put in the form of a written sublease agreement that both you and the subtenant sign.

The sublease agreement should include things like the amount and due date of the rent, where the subtenant is to send the rent, who is responsible for paying the utilities (typically, gas, electric, water, and telephone), the dates that the agreement begins and ends, a list of any possessions that you are leaving in the rental unit, and any conditions of care and use of the rental unit and your possessions. It's also important that the sublease agreement be consistent with the lease, so that your obligations under the lease will be fully performed by the subtenant, if that is what you and the subtenant have agreed on.

Assignments

An **assignment** is a transfer of your rights as a tenant to someone else. You might use an assignment if you have a lease and need to move permanently before the lease ends. Like a sublease, an assignment is a contract between the original tenant and the new tenant (not the landlord).

However, an assignment differs from a sublease in one important way. If the new tenant accepts the assignment, the new tenant is directly responsible to the landlord for the payment of rent, for damage to the rental unit, and so on. Nevertheless, an assignment *does not* relieve the original tenant of his or her legal obligations to the landlord. If the new tenant doesn't pay rent, or damages the rental unit, the original tenant remains legally responsible to the landlord.[62]

In order for the original tenant to avoid this responsibility, the landlord, the original tenant, and the new tenant all must agree that the new tenant will be *solely* responsible to the landlord under the assignment. This agreement is called a **novation,** and should be in writing.

REMEMBER: Even if the landlord agrees to a sublease or assignment, the tenant is still responsible for the rental unit *unless* there is a written agreement that states otherwise. For this reason, think carefully about whom you let live in the rental unit.

DEALING WITH PROBLEMS

Most landlord-tenant relationships go smoothly. However, problems sometimes arise. For example, what if the rental unit's furnace goes out in the middle of the winter? What happens if the landlord sells the building or decides to convert it into condominiums? This section discusses these and other possible issues and problems in the landlord-tenant relationship.

REPAIRS AND HABITABILITY

A **rental unit** must be fit to live in; that is, it must be **habitable.** In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies

[62] *Civil Code Section 822.*

[63] *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 719]; Civil Code Sections 1941, 1941.1.*

[64] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[65] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]; Hinson v. Delis (1972) 26 Cal.App.3d 62 [102 Cal.Rptr. 661].*

[66] *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719].*

[67] *Civil Code Sections 1929, 1941.2.*

with state and local building and health codes that materially affect tenants' health and safety.[63]

California law makes **landlords** and **tenants** each responsible for certain kinds of repairs, although landlords ultimately are legally responsible for assuring that their rental units are habitable.

Landlord's responsibility for repairs

Before renting a rental unit to a tenant, a landlord must make the unit fit to live in, or habitable. Additionally, while the unit is being rented, the landlord must repair problems which make the rental unit unfit to live in, or **uninhabitable**.

The landlord has this duty to repair because of a California Supreme Court case, called Green v. Superior Court,[64] which held that all leases and rental agreements contain an **implied warranty of habitability.** Under the "implied warranty of habitability," the landlord is legally responsible for repairing conditions that seriously affect the rental unit's habitability.[65] That is, the landlord must repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes.[66] However, the landlord is *not* responsible under the implied warranty of habitability for repairing damages which were caused by the tenant or the tenant's family, guests, or pets.[67]

Generally, the landlord also must do maintenance work which is necessary to keep the rental unit liveable.[68] Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the **rental agreement.**

The law is very specific as to what kinds of conditions make a rental uninhabitable. These are discussed below.

Tenant's responsibility for repairs

Tenants are required by law to take reasonable care of their rental units, as well as common areas such as hallways and outside areas. Tenants must act to keep those areas clean and undamaged. Tenants also are responsible for repair of all damage that results from their neglect or abuse, and for repair of damage caused by anyone for whom they are responsible, such as family, guests, or pets.[69] Tenants' responsibilities for care and repair of the rental unit are discussed in detail on page 22.

Conditions that make a rental unit legally uninhabitable

There are many kinds of defects that could make a rental unit unliveable. The implied warranty of habitability requires landlords to maintain their rental units in a condition fit for the "occupation of human beings."[70] In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.[71]

A dwelling may be considered uninhabitable (unliveable) if it substantially lacks any of the following:[72]

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.
- Clean and sanitary buildings, grounds, and appurtenances (for example, a garden or a detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

[68] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[69] *Civil Code Sections 1929, 1941.2.*

[70] *Civil Code Section 1941.*

[71] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[72] *Civil Code Section 1941.1.*

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room which is ventilated and allows privacy.
- A kitchen with a sink that cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.[73]

The implied warranty of habitability is *not* violated merely because the rental unit is not in perfect, aesthetically pleasing condition. Nor is the implied warranty of habitability violated if there are minor housing code violations, which, standing alone, do not affect habitability.[74]

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, the landlord's failure to do so probably does not violate the implied warranty of habitability.[75]

Beginning on July 1, 1998, main entry doors of rental units must have operable deadbolt locks, and windows must have operable locking or security devices.[75a]

Limitations on landlord's duty to keep the rental unit habitable

Even if a rental unit is unliveable because of one of the conditions listed above, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common areas (see page 21), the law lists specific things that a tenant must do to keep the rental unit liveable. If a tenant fails to do one of these required things, and the tenant's failure has either substantially caused an unliveable condition to occur or has substantially interfered with the landlord's ability to repair the condition, the landlord does not have to repair the condition.[76]

Tenants must do all of the following:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; and allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.
- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment, or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live, and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom, and not as a kitchen.

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.[77]

Even if a tenant violates these requirements, the landlord could be prosecuted for any resulting building and housing code violations. However, a tenant cannot withhold rent or sue the landlord for violating the implied warranty of habitability if the tenant has failed to meet these requirements.[78]

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement or **lease** may require either the tenant or the landlord to fix a particular item. Items covered by such an agreement might include

[73] *Health and Safety Code Sections 17900-17995.*

[74] *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719]; Hinson v. Delis (1972) 26 Cal.App.3d 62, 70 [102 Cal.Rptr. 661, 666].*

[75] *Civil Code Section 1941.4; Public Utilities Code Section 788. See California Practice Guide, Landlord-Tenant, Paragraph 3:21.1 (Rutter Group, 1996).*

[75a] *Civil Code Section 1941.3. See this section for additional details and exemptions. Remedies for violation of these requirements are listed at Civil Code Section 1941.3(c).*

[76] *Civil Code Section 1941.2(a).*

[77] *Civil Code Section 1941.2(b).*

refrigerators, washing machines, parking places, or swimming pools. These items are usually considered "amenities," and their absence does not make a dwelling unit unfit for living.

These agreements to repair are usually enforceable in accordance with the intent of the parties to the rental agreement or lease.

Tenant's agreement to make repairs

The landlord and the tenant may agree in the rental agreement or lease that the tenant will perform *all* repairs and maintenance in exchange for lower rent.[79] Such an agreement must be made in good faith: there must be a real reduction in the rent, and the tenant must intend and be able to make all the necessary repairs. When negotiating the agreement, the tenant should consider whether he or she wants to try to negotiate a cap on the amount that he or she can be required to spend making repairs. Regardless of any such agreement, the landlord is responsible for maintaining the property as required by state and local housing codes.[80]

Having Repairs Made

If a tenant believes that his or her rental unit needs repairs, and that the landlord is responsible for the repairs under the implied warranty of habitability, the tenant should notify the landlord. Since rental units typically are business investments for landlords, most landlords want to keep them safe, clean, attractive, and in good repair.

It's best for the tenant to notify the landlord of damage or defects by *both* a telephone call *and* a letter. The tenant should specifically describe the damage or defects and the required repairs in both the phone call and the letter. The tenant should date the letter and keep a copy to show that notice was given and what it said.

The tenant should send the notice to the landlord, manager, or agent by certified mail with return receipt requested. Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent and ask for a receipt to show that the notice was received. The tenant should keep a copy of the notice and the receipt, or some other evidence that the notice was delivered.

If the landlord doesn't make the requested repairs, and doesn't have a good reason for not doing so, the tenant may have one of several remedies, depending on the seriousness of the repairs. These remedies are discussed in the rest of this section. *Each of these remedies has its own risks and requirements, so the tenant should use them carefully.*

The "repair and deduct" remedy

The **"repair and deduct"** remedy allows a tenant to deduct money from the rent, up to the amount of one month's rent, to pay for repair of defects in the rental unit.[81] This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[82] (See discussion of the implied warranty of habitability, pages 20-22.) Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it's a good idea for the tenant to talk to a lawyer, legal aid organization, or tenants' association before proceeding.

The basic requirements and steps for using the repair and deduct remedy are as follows:

1. The defects must be serious and directly related to the tenant's health and safety.[83]
2. The repairs cannot cost more than one month's rent.
3. The tenant can use the repair and deduct remedy only twice in any 12-month period.
4. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.

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[78] *Civil Code Sections 1929, 1942(c); see Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/8 (NOLO Press 1996).*

[79] *Civil Code Section 1942.1.*

[80] *Moskovitz and Warner, Tenants' Rights, page 2/6 (NOLO Press, 1996).*

[81] *Civil Code Section 1942.*

[82] *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116 (Rutter Group, 1996).*

[83] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/9 (NOLO Press 1996).*

5. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "Giving the landlord notice," page 27.)
6. The tenant must give the landlord a reasonable period of time to make the needed repairs.
    - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation. For example, if the furnace is broken and it's very cold outdoors, two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.
    - It's a good idea, but not a legal requirement, for the tenant to give the landlord a written notice that explains why the tenant hasn't paid the full amount of the rent. The tenant should keep a copy of this notice.

RISKS: The defects may not be serious enough to justify using the repair and deduct remedy. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or can file an **eviction** action based on the nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord proper advance notice or a reasonable time to make repairs, the court can order the tenant to pay the full rent even though the tenant paid for the repairs, or can order that the eviction proceed.

The landlord may try to evict the tenant or raise the rent because the tenant used the repair and deduct remedy. This kind of action is known as a **"retaliatory eviction"** (see page 42). The law prohibits this type of eviction, with some limitations.[84]

The "abandonment" remedy

Instead of using the repair and deduct remedy, a tenant can **abandon** (move out of) a defective rental unit. This remedy is called the **"abandonment"** remedy. A tenant might use the abandonment remedy where the defects would cost more than one month's rent to repair,[85] *but this is not a requirement of the remedy*. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy.[86]

In order to use the abandonment remedy, the rental unit must have substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[87] (See discussion of the implied warranty of habitability, pages 20-22.) If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once he or she has abandoned the rental unit.[88]

The basic requirements and steps for lawfully abandoning a rental unit are:

1. The defects must be serious and directly related to the tenant's health and safety.[89]
2. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "Giving the landlord notice," page 27.)
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.
    - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if tree roots block the main

[84] *Civil Code Section 1942.5(a).*

[85] *California Practice Guide, Landlord-Tenant, Paragraph 3:127 (Rutter Group, 1996).*

[86] *Civil Code Section 1942.*

[87] *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116, 3:126 (Rutter Group, 1996).*

[88] *Civil Code Section 1942.*

[89] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/9 (NOLO Press 1996).*

[90] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

sewer drain and none of the toilets or drains work, a reasonable period might be as little as one or two days.

5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant's reasons for moving and then actually move out. The tenant should return all the rental unit's keys to the landlord. The notice should be mailed or delivered as explained in "Giving the landlord notice," page 27. The tenant should keep a copy of the notice.
   - It's a good idea, but not a legal requirement, for the tenant to give the landlord written notice of the tenant's reasons for moving out. The tenant's letter may discourage the landlord from suing the tenant to collect additional rent or other damages. A written notice also documents the tenant's reasons for moving, which may be helpful in the event of a later lawsuit. If possible, the tenant should take photographs or a video of the defective conditions or have local health or building officials inspect the rental unit before moving. The tenant should keep a copy of the written notice and any inspection reports and photographs or videos.

RISKS: The defects may not affect the tenant's health and safety seriously enough to justify using the remedy. The landlord may sue the tenant to collect additional rent or damages.

The "rent withholding" remedy

A tenant may have another option for getting repairs made—the **"rent withholding"** remedy.

By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability.[90] (See discussion of the implied warranty of habitability, pages 20-22.) In order for the tenant to withhold rent, the defects or repairs that are needed must be *more* serious than would justify use of the repair and deduct and abandonment remedies.[91] The defects must be serious ones that threaten the tenant's health or safety.[92]

The defects that were serious enough to justify withholding rent in Green v. Superior Court[93] are listed below as examples:

- Collapse and nonrepair of the bathroom ceiling.
- Continued presence of rats, mice, and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the Green case, *all* of these defects were present, and there also were many violations of the local housing and building codes. In other situations, the defects that would justify rent withholding may be different, but the defects would still have to be serious ones that threaten the tenant's health or safety.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the defects that require repair. In the event of a court action, it is helpful to have photographs or videos, witnesses, and copies of letters informing the landlord of the problem.

Before the tenant withholds rent, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The basic requirements and steps for using the rent withholding remedy are:

1. The defects or the repairs that are needed must threaten the tenant's health or safety.[94]
   - The defects must be serious enough to make the rental unit uninhabitable. For example, see the defects described in the discussion of the Green case above.
2. The tenant, or the tenant's family, guests, or pets must not have caused the defects that require repair.

[91] *Moskovitz and Warner, Tenants' Rights, page 7/10 (NOLO Press 1996).*

[92] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/10 (NOLO Press 1996).*

[93] *10 Cal.3d 616 [111 Cal.Rptr. 704].*

[94] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/10 (NOLO Press 1996).*

3. The tenant must inform the landlord either orally or in writing of the repairs that are needed. (See "Giving the landlord notice," page 27.)
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.
   - What is a "reasonable period of time"? This depends on the defects and the type of repairs that are needed.
5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant can withhold some or all of the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.
   - How much rent can the tenant withhold? While the law does not provide a clear test for determining how much rent is reasonable for the tenant to withhold, judges in rent withholding cases often use one of the following methods. These methods are offered as examples.

     Percentage reduction in rent: The percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent.

     Reasonable value of rental unit: The value of the rental unit in its defective state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually the rent stated in the rental agreement or lease) and the rental unit's value in its defective state.[95]
6. The tenant should save the withheld rent money *and not spend it*. The tenant should expect to have to pay the landlord some or all of the withheld rent once the repairs have been made.
   - If the tenant withholds rent, the tenant should put the withheld rent money into a special bank account (called an **escrow account**). The tenant should notify the landlord in writing that the withheld rent money has been deposited in the escrow account, and explain why.

Depositing the withheld rent money in an escrow account is not required by law, but is a very good thing to do for three reasons.

First, as explained under "Risks" below, rent withholding cases often wind up in court. The judge usually will require the tenant to pay the landlord some reduced rent based on the value of the rental unit with all of its defects. Rarely does a judge excuse payment of all rent. Depositing the withheld rent money in an escrow account assures that the tenant will have the money to pay any "reasonable rent" that the court orders.

Second, putting the withheld rent money in an escrow account proves to the court that the tenant didn't withhold rent just to avoid paying rent. If there is a court hearing, the tenant should bring rental receipts or other evidence to show that he or she has been reliable in paying rent in the past.

Third, most legal aid organizations and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

Sometimes, the tenant and the landlord will be able to agree on the amount of rent that is reasonable for the time when the rental unit needed repairs. If the tenant and the landlord can't agree on a reasonable amount, the dispute will have to be decided in court, or resolved in an **arbitration** or **mediation** proceeding (see page 44).

RISKS: The defects may not be serious enough to threaten the tenant's health or safety. If the tenant withholds rent, the landlord may give the tenant an **eviction notice** (a **three-day notice** to pay the rent or leave). If the tenant refuses to pay, the landlord will probably go to court to evict the tenant. In the court action, the tenant will have to prove that the landlord violated the implied warranty of habitability.

If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent. The rent

[95] *See discussion in Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/11 (NOLO Press 1996) and Moskovitz and Warner, Tenants' Rights, page 7/10 (NOLO Press 1996).*

ordinarily must be paid within a few days after the judge makes his or her decision. If the tenant wins, but doesn't pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord, and the tenant probably will be evicted. If the tenant loses, he or she will have to pay the rent, probably will be evicted, and may be ordered to pay the landlord's attorney's fees.

There is another risk of using rent withholding: if the tenant doesn't have a lease, the landlord may ignore the tenant's notice of defective conditions and seek to remove the tenant by giving him or her a 30-day notice to move. This may amount to a **"retaliatory eviction"** (see page 42).[95a] The law prohibits retaliatory evictions, with some limitations.[96]

Giving the landlord notice

Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it's best to put the notice in writing. The notice should be in the form of a letter, and can be typed or handwritten. The letter should describe in detail the problem and the repairs that are required. The tenant should sign and date the letter and keep a copy.

The notice should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received, or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice. Whatever the method of delivery, it's important that the tenant have proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said. Keep the copy of the letter and the receipt in case of a dispute with the landlord.

Lawsuit for damages as a remedy

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit (see page 44).

A tenant has another option: filing a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in a timely manner.[97] This kind of lawsuit can be filed in small claims court, municipal court, or superior court, depending on the amount demanded in the suit.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, and "special damages" in an amount ranging from $100 to $1,000.[98] "Special damages" are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair the defects in the rental unit.

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition which significantly affects the health and safety of the tenant.[99] For example, a court could order a landlord to repair a leaky roof, and could retain jurisdiction over the case until the roof is fixed.

In order for a tenant to win such a lawsuit against the landlord, all of the following conditions must be met:[100]

- The rental unit must have serious habitability defects—that is, it must substantially lack any of the minimum requirements for habitability listed in the eight categories on page 21.
- A housing inspector must inspect the premises, and must notify the landlord or the landlord's agent, in writing, of the landlord's obligation to repair the substandard conditions.
- The substandard conditions must continue to exist for more than 60 days after the housing inspector issued the

[95a] *Moskovitz, California Eviction Defense Manual, Section 16.19 (Cal. Cont. Ed. Bar, 1997).*

[96] *Civil Code Section 1942.5(a).*

[97] *Civil Code Section 1942.4.*

[98] *Civil Code Section 1942.4(a).*

[99] *Civil Code Sections 1942.4(a),(c).*

[100] *Civil Code Section 1942.4(a).*

written notice, and the landlord does not have "good cause" for failing to make the repairs.

- The substandard conditions were not caused by the tenant or the tenant's family, guests, or pets.

In addition to recovering money damages, the party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court filing fees), plus reasonable attorney's fees as awarded by the court.[101]

Before filing this kind of lawsuit, the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair. (See "Giving the landlord notice," page 27.) The rental unit must have serious habitability defects that were not caused by the tenant's family, guests, or pets.
- The notice should specifically describe the defects and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord doesn't make the repairs within a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency and request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord written notice of the required repairs.
- The substandard conditions must continue to exist for more than 60 days after the housing inspector issues the notice.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports) so that the tenant can prove his or her case in court.
- The tenant should discuss the case with a lawyer, legal aid organization, tenant program, or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.

Resolving complaints out of court

Before filing suit, the tenant should try to resolve the dispute out of court, either through personal negotiation or a dispute resolution program that offers mediation or arbitration of landlord-tenant disputes. If the tenant and the landlord agree, a neutral person can work with both of them to reach a solution. Informal dispute resolution can be inexpensive and fast. (See "Arbitration and Mediation," page 44.)

Landlord's Sale of the Rental Unit

If your landlord voluntarily sells the rental unit that you live in, your legal rights as a tenant are not changed. Tenants who have a lease have the right to remain through the end of the lease under the same terms and conditions. The new landlord can terminate a periodic tenancy (for example, a month-to-month tenancy), but only after giving the tenant the required advance notice. (See "Landlord's notice to end a periodic tenancy," page 29.)

The sale of the building doesn't change the rights of the tenants to have their **security deposits** refunded when they move. Pages 32-33 discuss the landlord's responsibility for the tenants' security deposits after the rental unit has been sold.

Condominium Conversions

A landlord who wishes to convert rental property into condominiums must obtain approval from the city or county planning agency. The landlord also must receive final approval in the form of a public report issued by the state Department of Real Estate. Affected tenants must receive notices at various stages of the application and approval process.[102] These notices are designed to allow affected tenants and the public to have a voice in the approval process.[103] Tenants can check with local elected officials or housing agencies about the approval process and opportunities for public input.

[101] *Civil Code Section 1942.4(b).*

[102] *Government Code Sections 66427.1(a),(b).*

[103] *Government Code Sections 66451.3, 65090, 65091.*

[104] *Government Code Section 66427.1(c).*

[105] *Government Code Section 66427.1. See Business and Professions Code Sections 11018, 11018.2, California Practice Guide, Landlord-Tenant, Paragraph 5:306 and following (Rutter Group, 1996).*

Perhaps most important, affected tenants must be given written notice of the conversion to condominiums at least 180 days before their tenancies end due to the conversion.[104] Affected tenants also must be given a first option to buy the rental unit on the same terms that are being offered to the general public (or better terms). The tenants must be able to exercise this right for at least 90 days following issuance of the Department of Real Estate's public report.[105]

MOVING OUT

Giving and Receiving Proper Notice

Tenant's notice to end a periodic tenancy

To end a **periodic rental agreement** (for example, a month-to-month agreement), you must give your **landlord** proper written notice before you move.

If you pay rent monthly, you must give written notice at least 30 days before you move. If you pay rent every week, you must give written notice at least seven days before you move. You must follow these timelines *unless* your **rental agreement** provides for a shorter notice period. For example, if you have a month-to-month agreement, but agreed to seven days' advance notice in the rental agreement, you need to give only seven days' advance written notice. California law requires a *minimum* of seven days' advance notice to end any rental agreement.[106]

To avoid later disagreements, date the notice, state the date that you intend to move, and make a copy of the notice for yourself. It's best to deliver the notice to the landlord or property manager in person, or mail it by certified mail with return receipt requested. (You can also **serve** the notice by one of the methods described under "Proper Service of Notices," page 37.)[107]

You can give the landlord notice any time during the **rental period,** but you must pay full rent during the period covered by the notice. For example, say you have a month-to-month rental agreement, and pay rent on the first day of each month. You could give notice any time during the month (for example, on the tenth). Then, you could leave 30 days later (on the tenth of the following month, or earlier if you chose to). But you would have to pay rent for the first 10 days of the next month whether you stay for those 10 days or move earlier. (Exception: You would not have to pay rent for the entire 10 days if you left earlier, *and* the landlord rented the unit to another tenant during the 10 days, *and* the new tenant paid rent for all or part of the 10 days.)

Landlord's notice to end a periodic tenancy

A landlord can end a periodic **tenancy** with proper advance written notice in the same way that a **tenant** can. Your landlord must give you 30 days' advance written notice in the case of a month-to-month tenancy, seven days' advance written notice for a week-to-week tenancy, or the amount of notice specified in your rental agreement (but never less than seven days). The landlord usually isn't required to state a reason for ending the tenancy in the 30-day notice (see **"Thirty-day notice,"** page 35). The landlord can serve the 30-day notice by certified mail, or by one of the methods described under "Proper Service of Notices," page 37.[108]

Note: In the circumstances described on page 36, a landlord can give you just *three* days' advance written notice.

If you receive a 30-day notice, you must leave the **rental unit** within 30 days after the date that the landlord served the notice (see page 35). For example, if the landlord served the 30-day notice on July 16, you would begin counting the 30 days on July 17, and the 30-day period would end on August 15. If August 15 falls on a weekday, you would need to leave on or before that date. However, if the end of the 30-day period falls on a Saturday, you would not need to leave until Monday, August 17, because Saturdays and Sundays are holidays. Other legal holidays also extend the notice period.[109]

If you don't move by the end of the 30-day period, the landlord can file an **unlawful detainer lawsuit** to evict you (see page 38).

What if you have received a 30-day notice, but you want to continue to rent the property, or you believe that you haven't done anything to cause the landlord to give you a 30-day notice?

[106] *Civil Code Section 827.*
[107] *Civil Code Section 1946.*
[108] *Civil Code Section 1946.*
[109] *Code of Civil Procedure Section 12a.*

In these situations, you can try to convince the landlord to withdraw the notice. Try to find out why the landlord gave you the 30-day notice. If it's something within your control (for example, consistently late rent, or playing the stereo too loud), assure the landlord that in the future, you will pay on time or keep the volume turned down. Then, keep your promise. If the landlord won't withdraw the notice, you will have to move out at the end of the 30 days, or be prepared for the landlord to file an unlawful detainer lawsuit to evict you.

In some communities with rent control ordinances, a periodic tenancy cannot be ended by the landlord without a good faith "just cause" or "good cause" reason to evict. In these communities, the landlord must state the reason for the termination, and the reason may be reviewed by local housing authorities. Landlords usually have to state just cause for evicting tenants who live in federal or state subsidized housing. If you live in subsidized housing or in an area with rent control, check with your local housing officials to see if any of these special rules apply in your situation.

Advance Payment of Last Month's Rent

Many landlords require tenants to pay "last month's rent" as part of the **security deposit** or at the time the security deposit is paid. Whether the tenant can use this amount at the end of the tenancy to pay the last month's rent depends on the language used in the **lease** or rental agreement.[110]

If your lease or rental agreement calls part of your upfront payment "last month's rent," this pays the rent for your last month in the rental unit. However, sometimes landlords raise the rent before the last month's rent becomes due. In this situation, can the landlord require you to pay the amount of the increase for the last month?

The law does not provide a clear answer to this question. If your lease or rental agreement labels part of your upfront payment "last month's rent," then you have a strong argument that you paid the last month's rent when you moved in. In this situation, the landlord should *not* be able to require you to pay the amount of the increase for the last month.[111] However, if your lease or rental agreement labels part of your upfront payment "security for last month's rent," then the landlord has a good argument that you have not actually paid the last month's rent, but have only provided security for it. In this situation, the landlord *could* require you to pay the amount of the increase for the last month.

For example, say that your rental agreement labeled part of the total deposit that you paid when you moved in "security for last month's rent," or that "last month's rent" is one of the items listed in your rental agreement under the heading "Security." Suppose that your rent was $300 when you moved in and that you paid your landlord $300 as "security for the last month's rent." Suppose that you also paid your landlord an additional $300 as a security deposit. If the landlord properly raised your rent to $350 while you were living in the rental unit, you can expect to owe your landlord $50 for rent during the last month of your tenancy (that is, the current rent [$350] minus the prepaid amount [$300] equals $50 owed).

If your rental agreement calls your entire upfront payment a "security deposit" and does not label any part of it "last month's rent," or "security for last month's rent," then you will have to pay the last month's rent when it comes due. In this situation, you cannot use part of your security deposit to pay the last month's rent. However, you will be entitled to a refund of your security deposit, as explained in the next section.

Refunds of Security Deposits

Common problems and how to avoid them

The most common disagreement between landlords and tenants is over the refund of the tenant's security deposit after the tenant has moved out of the rental unit. California law

[110] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 5/4-5/5 (NOLO Press 1996).*

[111] *Moskovitz and Warner, Tenants' Rights, page 10/9 (NOLO Press 1996); see Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 5/5 (NOLO Press 1996).*

Suggested Approaches to Security Deposit Deductions

Unfortunately, the law's terms "reasonably necessary" and "ordinary wear and tear" are vague and mean different things to different people. The following suggestions are offered as practical guides for dealing with security deposit issues; while these suggestions are consistent with the law, they are not necessarily the law in this area.

1. **Costs of cleaning**

A landlord may properly deduct from the departing tenant's security deposit to pay for cleaning that is necessary to satisfy the "average" or "reasonable" incoming tenant.[112] A reasonable standard, which may not work in every case, is whether the departing tenant left the rental unit as clean as it was when he or she moved in.

A landlord cannot automatically charge each tenant for cleaning carpets, drapes, walls, or windows in order to prepare the rental unit for the next tenancy. Instead, the landlord must look at how well the departing tenant cleaned the rental unit, and may charge cleaning costs only if the rental unit (or a portion of it) was left in a clearly substandard condition. Reasonable cleaning costs would include the cost of such things as eliminating flea infestations left by the tenant's animals, cleaning the oven, removing decals from walls, removing mildew in bathrooms, and defrosting the refrigerator.

The landlord is allowed to deduct only the *reasonable* cost of cleaning the rental unit from the tenant's security deposit. One practical measure of the cost of cleaning is the going hourly rate for cleaning costs in the area where the rental unit is located.

(Continued on page 32)

therefore specifies procedures that the landlord must follow for refunding, using, and accounting for tenants' security deposits.

A landlord may use the tenant's security deposit for four purposes:

- For unpaid rent;
- For cleaning the rental unit when the tenant moves out, if the unit is not as clean as when it was rented;
- For repair of damages, other than normal wear and tear, caused by the tenant or the tenant's guests; and
- If the lease or rental agreement allows it, for the cost of restoring or replacing furniture, furnishings, or other items of personal property (including keys), other than for ordinary wear and tear.[113]

A landlord can withhold from the security deposit *only* those amounts that are reasonably necessary for these purposes. The security deposit *cannot* be used for repairing defects that existed in the unit before you moved in, for conditions caused by normal wear and tear during your tenancy or previous tenancies, or for cleaning a rental unit that is as clean as it was when you moved in.[114] A rental agreement or lease can *never* state that a security deposit is "nonrefundable."[115]

Within 21 days (three weeks) after you move, your landlord must either:

- Send you a full refund of your security deposit, or
- Mail or personally deliver an itemized statement that lists the amounts of and reasons for any deductions from your security deposit, along with a refund of any amounts not deducted.[116]

If, within the 21 days, the landlord does not provide you with a statement itemizing the deductions from the security deposit, the landlord loses the right to retain *any* of the security deposit, and must return the *entire* deposit to you.[117] However, the landlord can still seek damages from you in a court action for unpaid rent, repairs (except for ordinary wear and tear), and cleaning (except when the rental unit is as clean as when you rented it).[118]

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[112] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 20/5 (NOLO Press 1996); see Moskovitz and Warner, Tenants' Rights, page 10/3 (NOLO Press 1996).*

[113] *Civil Code Section 1950.5(b).*

[114] *Civil Code Section 1950.5(e).*

[115] *Civil Code Section 1950.5(l).*

[116] *Civil Code Section 1950.5(f).*

[117] *Granberry v. Islay Investments (1995) 9 Cal.4th 738, 745 [38 Cal.Rptr.2d 650, 653].*

[118] *Civil Code Section 1950.5(e); Granberry v. Islay Investments (1995) 9 Cal.4th 738, 745 [38 Cal.Rptr.2d 650, 653].*

What should you do if you believe that your landlord has made an improper deduction from your security deposit, or if the landlord keeps all of the deposit without good reason?

Tell the landlord why you believe that the deductions from your security deposit are improper. *Immediately* ask the landlord for a refund of the amount that you believe you're entitled to get back. You can make this request by phone, but you should follow it up with a letter. The letter should state the reasons that you believe the deductions are improper, and the amount that you feel should be returned to you. Keep a copy of your letter. It's a good idea to send the letter to the landlord by certified mail and to request a return receipt to prove that the landlord received the letter. Or, you can deliver the letter personally and ask the landlord or the landlord's agent to acknowledge receipt by signing and dating your copy of the letter.

If the landlord still doesn't send you the refund that you think you're entitled to, try to work out an acceptable compromise. You can suggest that the dispute be mediated (see page 44). You can also contact one of the agencies listed on pages 43-44 for assistance. If none of this works, you may want to take legal action (see page 34).

Refund of security deposits after sale of building

When a building is sold, the selling landlord must do one of two things with the tenants' security deposits. The selling landlord must either return the security deposits to the tenants following the sale, or transfer the security deposits to the new landlord.[119]

The selling landlord may deduct amounts from the security deposits just as if the tenants had moved from the rental unit (for example, to cover unpaid rent or damage to the rental). If the selling landlord makes deductions from the security deposits, he or she must return the balance of the security deposits to the tenants, or transfer the balance of the security deposits to the new landlord.

In either case, the selling landlord must send itemized statements to the tenants that account for any deductions. The accountings must state the reasons for and the amounts of any deductions

SUGGESTED APPROACHES TO SECURITY DEPOSIT DEDUCTIONS, CONTINUED

2. **Carpets and drapes — "useful life" rule**

Ordinary wear and tear to carpets or drapes cannot be charged against a tenant's security deposit. Ordinary wear and tear includes simple wearing down of carpet and drapes because of normal use or aging, and includes moderate dirt or spotting. In contrast, large rips or indelible stains justify a deduction from the tenant's security deposit for repairing or replacing the carpet or drapes.

One common method of calculating the deduction for replacement prorates the total cost of replacement so that the tenant pays only for the remaining useful life of the item that the tenant has damaged or destroyed. For example, suppose a tenant has damaged beyond repair an eight-year-old carpet that had a life expectancy of ten years, and that a replacement carpet of similar quality would cost $1,000. The landlord could properly charge only $200 for the two years' worth of life (use) that would have remained if the tenant had not damaged the carpet.

3. **Repainting walls**

One approach for determining the amount that the landlord can deduct from the tenant's security deposit for repainting, *when repainting is necessary*, is based on the length of the tenant's stay in the rental unit. This approach assumes that interior paint has a two-year life. (Some landlords assume that interior paint has a life of three years or more.)

Length of stay	*Deduction*
Less than 6 months	full cost
6 months to 1 year	two-thirds of cost
1 year to 2 years	one-third of cost
2 or more years	no deduction

(CONTINUED ON PAGE 33)

[119] *Civil Code Section 1950.5(g).*

[120] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 20/6 (NOLO Press 1996).*

[121] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, page 20/6 (NOLO Press 1996).*

Suggested Approaches to Security Deposit Deductions, continued

Using this approach, if the tenant lived in the rental unit for two years or more, the tenant could not be charged for any repainting costs, no matter how dirty the walls were.[120]

4. **Other damage to walls**

Generally, minor marks or nicks in walls are the landlord's responsibility as normal wear and tear (e.g., worn paint caused by a sofa against the wall). Therefore, the tenant should not be charged for such marks or nicks. However, a large number of holes in the walls or ceiling that require filling with plaster, or that otherwise require patching and repainting, could justify withholding the cost of repainting from the tenant's security deposit. In this situation, deducting for painting would be more likely to be proper if the rental unit had been painted recently, and less likely to be proper if the rental unit needed repainting anyway. Generally, large marks or paint gouges are the tenant's responsibility.[121]

5. **Common sense and good faith**

Remember: *These suggestions are not hard and fast rules. Rather, they are offered to help tenants and landlords avoid, understand, and resolve security deposit disputes.*

Security deposit disputes often can be resolved, or avoided in the first place, if the parties exercise common sense and good judgment, and deal with each other fairly and in good faith (see page 14). For example, a landlord should not deduct from the tenant's security deposit for ordinary wear and tear, and a tenant should not try to avoid responsibility for damages that the tenant has caused.

Especially in disputes about security deposits, overreaching by one party only invites the other party to take a hard line. Disputes that reach this level often become unresolvable by the parties and wind up in court.

from each tenant's security deposit. The selling landlord must send the statement to each tenant by first class mail, or personally deliver it to each tenant.

If the selling landlord transfers the security deposits to the new landlord, the selling landlord must notify the tenants of this in writing. The selling landlord must also notify each tenant of any amounts deducted from the security deposit, and the reason for each deduction. The written notice must also tell the tenant the name, address, and telephone number of the new landlord. The selling landlord must send this notice to each tenant by first class mail, or personally deliver it to each tenant.

If the selling landlord fails to return the tenants' security deposits to the tenants, or fails to transfer them to the new owner, *both* the new landlord and the selling landlord are legally responsible to the tenants for the security deposits.[122] If the selling landlord and the security deposits can't be found, the new landlord is required to refund all security deposits (after any proper deductions) as tenants move out.

The new landlord can't charge a new security deposit to current tenants simply to make up for security deposits that he or she failed to obtain from the selling landlord. But if the security deposits have been returned to the tenants, or if the new landlord has properly accounted to the tenants for proper deductions taken from the security deposits, the new landlord may legally collect *new* security deposits.[123] Also, if a tenant causes damage to the rental unit that costs more to repair than the amount of the security deposit, the landlord can recover this excess amount from the tenant.[124]

Can the new landlord increase the amount of your security deposit? This depends, in part, on the type of tenancy that you have. If you have a lease, the new landlord can't increase your security deposit unless this is specifically allowed by the lease. For periodic tenants (those renting month-to-month, for example) the new landlord can increase security deposits only after giving proper advance written notice. In either situation, the total amount of the security deposit after the increase cannot be more than the legal limit (see page 14).

All of this means that it's important to keep copies of your rental agreement and the receipt for your security deposit. You may need those records to prove that you paid a security deposit, to verify the amount, and to determine whether the landlord had a right to make a deduction from the deposit.

[122] *Civil Code Section 1950.5(i). Exception: If the new landlord acted in the good faith belief that the old landlord properly complied with the transfer or refund requirement, the new landlord is not jointly liable with the old landlord.*

[123] *Civil Code Section 1950.5(i).*

[124] *Civil Code Section 1950.5(i).*

Legal actions for obtaining refunds of security deposits

Suppose that your landlord does not return your security deposit as required by law, or makes improper deductions from it. If you cannot successfully work out the problem with your landlord, you can file a lawsuit in small claims court for the amount of the security deposit plus court costs, and possibly also a penalty and interest, up to a maximum of $5,000. (If your claim is for a little more than $5,000, you can **waive** (give up) the extra amount and still use the small claims court.) For amounts greater than $5,000, you must file in municipal or superior court, and you ordinarily will need a lawyer in order to effectively pursue your case. In such a lawsuit, the landlord has the burden of proving that his or her deductions from your security deposit were reasonable.[125]

If you convince the court that the landlord refused to return the security deposit in "bad faith," the court can order the landlord to pay you the amount of the improperly withheld deposit, plus up to $600 as a "bad faith" penalty. The court has the option of awarding a bad faith penalty in addition to actual damages whenever the facts of the case warrant—even if the tenant has not requested the penalty.[126] These additional amounts can also be recovered if a landlord who has purchased your building makes a "bad faith" demand for replacement of security deposits. The landlord has the burden of proving the authority upon which the demand for the security deposits was based.[127]

Whether you can collect attorney's fees in such a suit depends on what is stated in the lease or rental agreement. If attorney's fees are provided for in the lease or rental agreement, you can claim such fees as part of the judgment, even if the rental agreement or lease stated that only the landlord could claim such fees.[128]

Moving at the End of a Lease

A lease expires automatically at the end of the lease term. The tenant is expected either to renew the lease before it expires (with the landlord's agreement) or to move out. A lease usually doesn't require a tenant to give the landlord any advance written notice when the lease is about to expire. However, the tenant should read the lease to see if it has any provisions covering what happens at the end of the lease.

Before you move, you may want to give the landlord a courtesy notice stating that you do not want to renew your lease.

If you continue living in the rental after the lease expires, and if the landlord accepts rent from you, your tenancy will be a periodic tenancy from that point on. The length of time between your rent payments will determine the type of the tenancy (for example, monthly rent results in a month-to-month tenancy). Except for the length of the agreement, all other provisions of the lease will remain in effect.[129]

If you don't move in time, and if the landlord refuses to accept rent after the lease expires, the landlord can file an **eviction** lawsuit immediately without giving you any notice (see page 38). (This may not be true if you live in a rent control jurisdiction.)

IMPORTANT: If you want to *renew* your lease, you should begin negotiating with your landlord in plenty of time before the lease expires. Both your landlord and you will have to agree to the terms of the new lease. This process may take some time if one of you wants to negotiate different terms in the new lease.

The Inventory Checklist

At least a week before moving out, you should arrange a time for you and the landlord to walk through the rental unit and complete the "Condition Upon Departure" portion of the inventory checklist.

Ideally, the walk-through should occur after you have moved all of your belongings and have thoroughly cleaned the rental unit. Carefully completing the checklist at this point will help identify problem areas, and will help avoid disagreements after you have moved. For example, you can identify repairs or cleaning that may be needed by comparing items noted under "Condition Upon Arrival" and "Condition Upon Departure." Items identified as

[125] *Civil Code Section 1950.5(k).*
[126] *Civil Code Section 1950.5(k).*
[127] *Civil Code Section 1950.5(k).*
[128] *Civil Code Section 1717.*
[129] *Civil Code Section 1945.*

needing repair or cleaning may result in deductions from your security deposit, unless you take care of them yourself or reach an agreement with the landlord. See additional suggestions regarding the Inventory Checklist on page 61, and "Refunds of Security Deposits," pages 30-34.

TERMINATIONS AND EVICTIONS

When Can a Landlord Terminate a Tenancy?

A **landlord** can terminate (end) a month-to-month **tenancy** simply by giving the **tenant** 30 days' advance written notice. (For an explanation of month-to-month tenancies, see page 10; for an explanation of 30-day notices, see pages 29-30 and the next section.)

However, the landlord can terminate the tenancy by giving the tenant only *three* days' advance written notice if the tenant has done any of the following:[130]

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with the other tenants ("committed a nuisance").
- Used the rental property for an unlawful purpose.

Three-day notices are explained on pages 36-37.

Written Notices of Termination

Thirty-day notice

A landlord who wants to terminate (end) a month-to-month tenancy can do so by properly serving a written 30-day notice on the tenant. Generally, a 30-day notice doesn't have to state the landlord's reason for ending the tenancy. **Thirty-day notices** are discussed in detail on pages 29-30, and proper service of notices is discussed on page 37.

In some localities or circumstances, special rules may apply to 30-day notices:

- Some rent control cities require "just cause" for eviction, and the landlord's notice must state the reason for termination.
- Subsidized housing programs may limit allowable reasons for **eviction,** and may require that the notice state one of these reasons.
- Some reasons for eviction are unlawful. For example, an eviction cannot be **retaliatory** or discriminatory (see pages 42-43).

The landlord can give the tenant *fewer* than 30-days' notice if the rental agreement allows a shorter notice period (see page 11).

How to respond to a thirty-day notice

Suppose that you have been properly served with a 30-day notice. During the 30-day period, you should either move out or try to make arrangements with the landlord to stay. If you want to continue occupying the **rental unit,** ask the landlord what you need to do so make that possible. While a landlord is not required to state a reason for giving a 30-day notice, most landlords do have a reason for terminating a tenancy. If you want to stay, it's helpful to know what you can do to make your relationship with the landlord a better one.

If your landlord agrees that you can continue to occupy the rental unit, it's important that your agreement with the landlord be in writing. The written agreement might be an attachment to your **lease** or **rental agreement** that both the landlord and you sign, or an exchange of letters between you and the landlord that states the details of your agreement. Having the agreement in writing ensures that you and your landlord are clear about your future relationship.

[130] *Civil Code Sections 1161(2)-(4).*

If the landlord doesn't agree to your staying, you will have to move out. You should do so within the 30 days. Take all of your personal belongings with you, and leave the rental property at least as clean as when you rented it. This will help with the refund of your **security deposit** (see "Refunds of Security Deposits," page 30).

If you have haven't moved at the end of the 30 days, you will be unlawfully occupying the rental unit, and the landlord can file an **unlawful detainer (eviction) lawsuit** to evict you.

If you believe that the landlord has acted unlawfully in giving you a thirty-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," page 43.)

Three-day notice

A landlord can use a written three-day notice (**eviction notice**) if the tenant has done any of the following:[131]

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with the other tenants ("committed a nuisance").
- Used the rental property for an unlawful purpose.

If the landlord gives the tenant a three-day notice because the tenant hasn't paid the rent, the notice must specify the amount of rent that is due. If the three-day notice is based on one of the other four conditions listed above, the notice must either describe the tenant's violation of the lease or rental agreement, or describe the tenant's other improper conduct. The three-day notice must be properly served on the tenant (see page 37).

Depending on the type of violation, the three-day notice demands either (1) that the tenant correct the violation or leave the rental unit, or (2) that the tenant leave the rental unit. If the violation involves something that the tenant can correct (for example, the tenant hasn't paid the rent, or the tenant has a pet but the lease doesn't permit pets), the notice must give the tenant the option to correct the violation.

Failing to pay the rent, and most violations of the terms of a lease or rental agreement, can be corrected. In these situations, the three-day notice must give the tenant the option to correct the violation. However, the other three conditions listed above *cannot* be corrected, and the three-day notice can simply order the tenant to leave at the end of the three days.

If you pay the rent or correct a correctable violation of the lease or rental agreement within the three-day notice period, the tenancy continues.[132] If you attempt to pay all the past-due rent demanded after the three-day period expires, the landlord can either file a lawsuit to evict you or accept the rent payment. If the landlord accepts the rent, the landlord **waives** (gives up) the right to evict you based on late payment of rent.[133]

See page 37 on how to count the three days.

How to respond to a three-day notice

Suppose that your landlord properly **serves** you a three-day notice because you haven't paid the rent. You must either pay the full amount of rent that is due or vacate (leave) the rental unit within the three days, unless you have a legal basis for not paying rent (see page 25).

If you decide to pay the rent that is due, it's best to call the landlord immediately. Tell the landlord that you intend to pay the amount demanded in the notice (if it is correct) and arrange for a time and location where you can deliver the payment to the landlord or the landlord's agent. *You must pay the rent before the end of the three days*. You should pay the unpaid rent in cash, or by cashier's check or money order. Get a receipt from the landlord or the landlord's agent.

If the amount of rent demanded is not correct, it's essential that you discuss this with

[131] *Civil Code Sections 1161(2)-(4).*

[132] *Code of Civil Procedure Section 1161(3).*

[133] *EDC Associates Ltd. v. Gutierrez (1984) 153 Cal.App.3d 167 [200 Cal.Rptr. 333].*

the landlord immediately, and offer to pay the amount that is actually due. Make this offer orally and in writing, and keep a copy of the written offer. The landlord's notice is not legally effective if it demands more rent than is actually due, or if it includes any charges other than for past-due rent (for example, late charges, unpaid utility charges, dishonored check fees, or interest).[134]

If the amount of rent demanded is correct and doesn't include any other charges, and if you decide not to pay, then you and any other occupants should move out promptly.

If you stay beyond the three days without paying the rent that is properly due, you will be occupying the rental unit unlawfully. The landlord then has a single, powerful remedy: a court action to evict you and recover the unpaid rent (called an "unlawful detainer (eviction) lawsuit" [see page 38]). Your failure to pay the rent and to leave promptly may also become part of your credit history, which could affect your ability to rent from other landlords.

If the three-day notice is based on something other than failure to pay rent, the notice will state whether you can correct the problem and remain in the rental unit (see page 36). If the problem can be corrected and you want to stay in the rental unit, *you must correct the problem within the three days*. Once you have corrected the problem, you should promptly notify the landlord or the property manager.

Even if the notice does not state that you can correct the problem, you can try to persuade the landlord that you will correct the problem and be a good tenant if the landlord agrees to your staying. If the landlord agrees, keep your promise immediately. The landlord should then waive (forgive) your violation, and you should be able to stay in the rental unit. However, in the event of another violation, the landlord probably will serve you with another three-day notice, or with a thirty-day notice.

If you believe that the landlord has acted unlawfully in giving you a three-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," page 43.)

How to count the three days

To count the three days, begin with the first day following the day the notice was served. If the last day falls on a Saturday, Sunday, or holiday, the third day will not expire until the following Monday or nonholiday.[135] (See the next section for a discussion of service of the notice and the beginning of the notice period.)

Proper Service of Notices

A landlord's three-day or thirty-day notice to a tenant must be "served" properly to be legally effective. The terms **"serve"** and **"service"** refer to procedures required by the law. These procedures are designed to increase the likelihood that the person to whom notice is given actually receives the notice.

A landlord can serve a *three-day* notice on the tenant in one of three ways: by personal service, by substituted service, or by posting and mailing. The landlord, the landlord's agent, or anyone over 18 can serve a notice on a tenant.

- Personal service—To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).[136] The notice period begins the day *after* you receive the notice.
- Substituted service on another person—If the landlord can't find you at home, the landlord should try to serve you personally at work. If the landlord can't find you at home or at work, the landlord can use "substituted service" instead of serving you personally.

  To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of "suitable age and discretion" at your home or work *and also* mail a copy of the notice to you at home.[137] A person of

[134] *Brown and Warner, The Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 16/2-16/3 (NOLO Press 1996).*

[135] *Civil Code Sections 12, 12a.*

[136] *Code of Civil Procedure Section 1162(1).*

[137] *Code of Civil Procedure Section 1162(2).*

suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

Service of the notice is legally complete when *both* of these steps have been completed. Because substituted service relies in part on mailing to give the tenant notice, the law is not completely clear about when the three-day period begins.[138] However, the tenant is wise to assume that the notice period begins the day after both steps have been completed.

- **Posting and mailing**—If the landlord can't serve the notice on you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) *and* by mailing a second copy to you at the rental unit's address.[139] (This service method is commonly called "posting and mailing" or "nailing and mailing.")

  Service of the notice is not complete until the second copy of the notice has been mailed. The notice period begins the day after the notice was posted *and* mailed.[140]

How to count the three days is explained on page 37.

A landlord can use any of these methods to serve a *thirty-day* notice on a tenant, or can send the notice to the tenant by certified or registered mail with return receipt requested.[141]

The Eviction Process (Unlawful Detainer Lawsuit)

Overview of the eviction process

If the tenant doesn't voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can evict the tenant. In order to evict the tenant, the landlord must file an unlawful detainer lawsuit in municipal court (justice court in some rural areas).

In an eviction lawsuit, the landlord is called the "plaintiff" and the tenant is called the "defendant."

An unlawful detainer lawsuit is a "summary" court procedure. This means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most cases, the tenant has only *five days* to file a written response to the lawsuit after being served with a copy of the landlord's complaint.[142] Normally, a judge will hear and decide the case within 20 days after the tenant files an answer.[143]

The court-administered eviction process assures the tenant of the right to a court hearing if the tenant believes that the landlord has no right to evict the tenant. The landlord *must* use this court process to evict the tenant; the landlord *cannot* use self-help measures to force the tenant to move. For example, the landlord cannot physically remove or **lock out** the tenant, cut off utilities such as water or electricity, remove outside windows or doors, or seize (take) the tenant's belongings in order to carry out the eviction. The landlord *must use the court procedures.*

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant's damages, as well as penalties of up to $100 per day for the time that the landlord used the unlawful methods.[144]

In an unlawful detainer lawsuit, the court holds a hearing at which the parties can present their evidence and explain their case. If the court finds that the tenant has a good defense, the court will not evict the tenant. If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). The landlord also may have to pay the tenant's attorney's fees, if the rental agreement or lease contains an attorney's

[138] *California Practice Guide, Landlord-Tenant, Paragraphs 7:188-7:189.3 (Rutter Group, 1996).*

[139] *Code of Civil Procedure Section 1162(3).*

[140] *Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15 [277 Cal.Rptr. 316]. But see the discussion of whether mailing the notice extends the time for response in California Practice Guide, Landlord-Tenant, Paragraphs 7:188-7:189.3 (Rutter Group, 1996).*

fee provision and the tenant was represented by an attorney.[145]

If the court decides in favor of the landlord, the court will issue a **writ of possession**. The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the five-day period, the writ of possession authorizes the sheriff to physically remove and lock the tenant out, and seize (take) the tenant's belongings that have been left in the rental unit. *The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant*.

The court also may award the landlord any unpaid rent if the eviction is based on the tenant's failure to pay rent. The court also may award the landlord damages, court costs, and attorney's fees (if the rental agreement or lease contains an attorney's fee provision). If the court finds that the tenant acted maliciously in not giving up the rental unit, the court also may award the landlord up to $600 as a penalty.[146] The judgment against the tenant will be reported on the tenant's **credit report** for seven years.[147]

How to respond to an unlawful detainer lawsuit

If you are served with an unlawful detainer complaint, you should get legal advice or assistance *immediately*. Tenant organizations, tenant-landlord programs, housing clinics, legal aid organizations, or private attorneys can provide you with advice, and assistance if you need it. (See "Getting Help From a Third Party," page 43.)

You usually have only *five days* to respond in writing to the landlord's complaint. You must respond within this time by filing the correct legal document with the clerk of the court in which the lawsuit was filed. Typically, a tenant responds to a landlord's complaint by filing a written "answer." (You can get a copy of a form to use for filing an answer from the Clerk of Court's office.) If the fifth day falls on a weekend or holiday, you can file your written response on the following Monday or nonholiday.[148]

You may have a legal defense to the landlord's complaint. If so, you must state the defense in a written answer within the five-day period. You must file your written answer within the five-day period, or you will lose any defenses that you may have. Some typical defenses that a tenant might have are listed here as examples:

- The landlord's three-day notice requested more rent than was actually due.
- The rental unit violated the **implied warranty of habitability.**
- The landlord filed the eviction action in retaliation for the tenant exercising a tenant right or because the tenant complained to the building inspector about the condition of the rental unit.

Depending on the facts of your case, there are other legal responses to the landlord's complaint that you might file instead of an answer. For example, if you believe that your landlord did not properly serve the summons and the complaint, you might file a **Motion to Quash Service of Summons.** If you believe that the complaint has some technical defect or does not properly allege the landlord's right to evict you, you might file a **Demurrer.** *It is important that you obtain advice from a lawyer before you attempt to use these procedures.*

If you don't respond to the landlord's complaint within the five days, the court will enter a **default judgment** in favor of the landlord. A default judgment allows the landlord to obtain a **writ of possession** (see page 41), and may also award the landlord unpaid rent, damages, and court costs.

The Clerk of Court will ask you to pay a filing fee when you file your written response. The filing fee typically is between $35 and $85. However, if you can't afford to pay the filing fee, you can request that the Clerk allow you to file your response without paying the fee (that is,

[141] *Civil Code Sections 827, 1946; Code of Civil Procedure Section 1162.*
[142] *Code of Civil Procedure Section 1167.3.*
[143] *Code of Civil Procedure Section 1170.5(a).*
[144] *Civil Code Section 789.3.*
[145] *Civil Code Section 1717.*
[146] *Code of Civil Procedure Section 1174(b).*
[147] *Civil Code Sections 1785.13(a)(2),(3).*
[148] *Code of Civil Procedure Section 1167.*

you can request a waiver of the fee). An application form for a fee waiver, called an **"Application for Waiver of Court Fees and Costs,"** can be obtained from the Clerk of Court.

After you have filed your written answer to the landlord's complaint, the Clerk of Court will mail to both you and the landlord a notice of the time and place of the trial. If you don't appear in court, a default judgment will be entered against you.

Eviction of "unnamed occupants"

Sometimes, people who are not parties to the rental agreement or lease move into the rental unit with the tenant or after the tenant leaves, but before the unlawful detainer lawsuit is filed. When a landlord thinks that these "occupants" might claim a legal right to possess the rental unit, the landlord may seek to include them as defendants in the eviction action, even if the landlord doesn't know who they are. In this case, the landlord will tell the process server to serve the occupants with a **Prejudgment Claim of Right to Possession** form at the same time that the eviction summons and complaint are served on the tenants who are named defendants.[149] See additional discussion of "unnamed occupants" and Claim of Right to Possession forms on page 49.

Pretrial rent deposit program

If you live in El Cajon, Downey, Santa Maria, the City of Los Angeles, the City of San Bernardino, or Riverside County, you may be in an area that is participating in the Experimental Pretrial Rent Deposit Program. Tenant-defendants who live in areas participating in this program may be required to deposit future rent with the court before they can defend eviction actions against them. See page 48 for an explanation.

Appearing in court

Before appearing in court, you must carefully prepare your case, just as an attorney would. Among other things, you should:

- Talk with a housing clinic, tenant organization, attorney, or legal aid organization. This will help you understand the legal issues in your case and the evidence that you will need.
- Decide how you will present the facts that support your side of the case—whether by witnesses, letters, other documents, photographs or video, or other evidence.
- Have at least four copies of all documents that you intend to use as evidence—an original for the judge, a copy for the opposing party, a copy for yourself, and copies for your witnesses.
- Ask witnesses to testify at the trial, if they will help your case. You can **subpoena** a witness who will not testify voluntarily. A subpoena is an order from the court for a witness to appear. The subpoena must be served (handed to) the witness, and can be served by anyone but you who is over the age of 18. You can obtain a subpoena from the Clerk of Court. You must pay witness fees at the time the subpoena is served on the witness, if the witness requests them.

The parties to an unlawful detainer lawsuit have the right to a jury trial, and either party can request one. After you have filed your answer to the landlord's complaint, the court will send you a document called a **Memorandum to Set for Trial.** This document will indicate whether the plaintiff (landlord) has requested a jury trial. If not, and if you are not represented by a lawyer, tenant advisers usually recommend that you *not* request a jury trial.

There are several good reasons for this recommendation: first, presenting a case to a jury is more complex than presenting a case to a judge, and a nonlawyer representing himself or herself may find it very difficult; second, the party requesting a jury trial will be responsible for depositing the initial cost of jury fees with the court; and third, the losing party will have to pay all of the jury costs.

[149] *Code of Civil Procedure Section 415.46.*

[150] *Code of Civil Procedure Section 1179.*

[151] *California Practice Guide, Landlord-Tenant, Paragraph 9:432.4 (Rutter Group 1996).*

[152] *California Practice Guide, Landlord-Tenant, Paragraph 9:444 (Rutter Group 1996).*

[153] *Code of Civil Procedure Section 1176.*

After the court's decision

If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay the tenant's court costs (for example, filing fees) and the tenant's attorney's fees. However, the tenant will have to pay any rent that the court orders.

If the landlord wins, the tenant will have to move. In addition, the court may order the tenant to pay the landlord's court costs and attorney's fees, and any proven damages, such as overdue rent or the cost of repairs if damage was done to the premises.

It is possible, but rare, for a losing tenant to convince the court to allow the tenant to remain in the rental unit. This is called **relief from forfeiture** of the tenancy. The tenant must convince the court of two things in order to obtain relief from forfeiture: that the eviction would cause the tenant or the tenant's family severe hardship, and that the tenant is able to pay all of the rent that is due or that the tenant will fully comply with the lease.[150] A tenant cannot obtain relief from forfeiture when the term of the tenancy has already expired (for example, in a month-to-month tenancy).[151] Any petition for relief of forfeiture should be filed *immediately* after the court issues its judgment.[152]

A tenant who loses an unlawful detainer lawsuit may **appeal** the judgment if the tenant believes that the judge mistakenly decided a legal issue in the case. However, the tenant will have to move before the appeal is heard, unless the tenant files a petition for stay of enforcement of the judgment, or a petition for relief from forfeiture (described immediately above). The court will not grant the tenant's request for a stay of enforcement unless the court finds that the tenant or the tenant's family will suffer extreme hardship, and that the landlord will not suffer irreparable harm. If the court grants the request for a stay of enforcement, it will order the tenant to make rent payments to the court in the amount ordered by the court.[153]

A landlord who loses an unlawful detainer lawsuit also may appeal the judgment.

Writ of possession

If a judgment is entered against you and becomes final (for example, if you do not appeal or if you lose on appeal), and you do not move out, the court will issue a **writ of possession** to the landlord.[154] The landlord can deliver this legal document to the sheriff, who will then forcibly evict you from the rental unit if you don't leave promptly.

Before evicting you, the sheriff will serve you with a copy of the writ of possession.[155] The writ of possession instructs you that you must move out within five days after the writ is served on you, and that if you do not move out, the sheriff will remove you from the rental unit and place the landlord in possession of it.[156] The cost of serving the writ of possession will be added to the other costs of the suit that the landlord will collect from you.

After you are served with the writ of possession, you have five days to move. After five days, if you have not moved, the sheriff will return and physically remove you.[157] If your belongings are still in the rental unit, the sheriff may either remove them or have them stored by the landlord, who can charge you reasonable storage fees. If you do not reclaim these belongings within 18 days, the landlord can mail you a notice to pick them up, and then can either sell them at auction or keep them (if their value is less than $300).[158] If the sheriff forcibly evicts you, the sheriff's cost will also be added to the judgment, which the landlord can collect from you.

Setting aside a default judgment

If the tenant does not file a written response to the landlord's complaint, the landlord can ask the court to enter a **default judgment** against the tenant. The tenant then will receive a notice of judgment and writ of possession, as described above.

There are many reasons why a tenant might not respond to the landlord's complaint. For example, the tenant may have received the summons and complaint, but was not able to

[154] *Code of Civil Procedure Section 715.010.*
[155] *Code of Civil Procedure Section 715.020.*
[156] *Code of Civil Procedure Section 715.010(b)(2).*
[157] *Code of Civil Procedure Section 715.020(c).*
[158] *Code of Civil Procedure Sections 715.030, 1174(h); Civil Code Sections 1965, 1988. See the Department of Consumer Affairs' Legal Guides LT-4, "How to Get Back Possessions You Have Left in a Rental Unit," and LT-5, "Options for a Landlord: When a Tenant's Personal Property has Been Left in the Rental Unit."*

respond because the tenant was ill or incapacitated, or for some other very good reason. It is even possible (but not likely) that the tenant was never served with the landlord's summons and complaint. In situations such as these, where the tenant has a valid reason for not responding to the landlord's complaint, the tenant can ask the court to set aside the default judgment.

Setting aside a default judgment can be a complex legal proceeding. The most common reasons for seeking to set aside a default judgment are the tenant's (or the tenant's lawyer's) mistake, inadvertence, surprise, or excusable neglect.[159] A tenant who wants to ask the court to set aside a default judgment must act promptly. The tenant should be able to show the court that he or she has a satisfactory excuse for the default, acted promptly in making the request, and has a good chance to win at trial.[160] A tenant who thinks that grounds exist for setting aside a default judgment should first seek advice and assistance from a lawyer, a legal aid organization, or a tenant organization.

Retaliatory Actions, Evictions, and Discrimination

Retaliatory actions and evictions

A landlord may try to evict a tenant because the tenant has exercised a legal right (for example, using the **repair and deduct remedy)** or has complained about a problem in the rental unit. Or, the landlord may raise the tenant's rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right.

In either situation, the landlord's action is said to be **retaliatory** because the landlord is punishing the tenant for the tenant's exercise of a legal right. The law offers tenants protection from retaliatory eviction and other retaliatory acts.[161]

The law infers (assumes) that the landlord has a retaliatory motive if the landlord seeks to evict the tenant (or takes other retaliatory action) within six months after the tenant has exercised any of the following tenant rights:[162]

- Using the repair and deduct remedy, or telling the landlord that the tenant will use the repair and deduct remedy.
- Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice.
- Filing a lawsuit or beginning arbitration based on the condition of the rental unit.
- Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend against eviction on the basis of retaliation, the tenant must prove that he or she exercised one or more of these rights within the six-month period, that the tenant's rent is current, and that the tenant has not used the defense of retaliation more than once in the past 12 months. If the tenant produces all of this evidence, then the landlord must produce evidence that he or she did not have a retaliatory motive.[163] If both sides produce the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

A tenant can also assert retaliation as a defense to eviction if the tenant has lawfully organized or participated in a tenants' organization or protest, or has lawfully exercised any other legal right. In these circumstances, the tenant must prove that he or she engaged in the protected activity, and that the landlord's conduct was retaliatory.[164]

If you feel that your landlord has retaliated against you because of an action that you've properly taken against your landlord, talk with an attorney or legal aid organization. An attorney also may be able to advise you about other defenses.

Retaliatory discrimination

A landlord, managing agent, real estate broker, or salesperson violates California's Fair Employment and Housing Act by harassing, evicting, or otherwise discriminating against a person in the sale or renting of housing when the "dominant purpose" is to retaliate against a person who has done any of the following:[165]

[159] *Code of Civil Procedure Section 473(b). See Moskovitz, California Eviction Defense Manual, Section 12.12 (Cal. Cont. Ed. Bar 1997).*

[160] *Moskovitz, California Eviction Defense Manual, Sections 12.15, 12.16 (Cal. Cont. Ed. Bar 1997).*

[161] *Civil Code Section 1942.5.*

[162] *Civil Code Section 1942.5.*

- Opposed practices that are unlawful under the Act;
- Informed law enforcement officials of practices that the person believes are unlawful under the Act; or
- Aided or encouraged a person to exercise rights protected by the Act.

A tenant who can prove that the landlord's eviction action is based on a discriminatory motive has a defense to the unlawful detainer action. A tenant who is the victim of retaliatory discrimination also has a cause of action for damages under the Fair Employment and Housing Act.[166]

RESOLVING PROBLEMS

Talk With Your Landlord

Communication is the key to avoiding and resolving problems. If you have a problem with your **rental unit,** it's usually best to talk with your **landlord** before taking other action. Your landlord may be willing to correct the problem or to work out a solution. By the same token, the landlord (or the landlord's agent or manager) should discuss problems with the **tenant** before taking formal action. The tenant may be willing to correct the problem once he or she understands the landlord's concerns. Both parties should bear in mind that each has the duty to deal with the other fairly and in good faith (see page 14).

If discussing the problem with the landlord doesn't solve it, and if the problem is the landlord's responsibility (see pages 21-23), you should write a letter to the landlord. The letter should describe the problem, its effect on you, how long the problem has existed, what you may have done to remedy the problem or limit its effect, and what you would like the landlord to do. You should keep a copy of this letter.

If you have been dealing with an agent of the landlord, such as a property manager, you may want to directly contact the owner of the rental unit. The name and address of the owner and the property manager, or the person who is authorized to receive legal notices for the owner, must be written in your **rental agreement** (or **lease)** or posted conspicuously in the building.[167] You can also contact your County Assessor's Office for this information.

If you don't hear from the landlord after you send the letter, or if the landlord disagrees with your complaint, you may need to use one of the tenant remedies that are discussed in this booklet (such as the **repair and deduct remedy,** page 23), or obtain legal assistance. The length of time that you should wait for the landlord to act depends on the seriousness of the problem. Normally, 30 days is considered appropriate unless the problem is extremely serious.

Remember: The landlord and the tenant discussing problems with each other can prevent little problems from becoming big ones. Trying to work out problems benefits everybody. Sometimes, it's helpful to involve someone else, such as a mutual friend or a trained **arbitrator** or **mediator** (see page 44). If the problem truly cannot be resolved by discussion, negotiation, and acceptable compromise, *then* each party can look to the remedies provided by the law.

Getting Help From a Third Party

Many resources are available to help tenants and landlords resolve problems. Check which of the following agencies are available in your area, and call or write them for information or assistance:

- Local consumer protection agency. See the *City* and *County Government* listings in the phone book.
- Local housing agency. See the *City* and *County Government* listings in the phone book.
- Local district attorney's office. See the *County Government* listings in the phone book.
- City or county rent control board. See the *City* and *County Government* listings in the phone book.
- Local tenant association, or rental housing or apartment association. Check the white (business) and yellow pages in the phone book.

[163] *Civil Code Sections 1945.2 (a),(b); see California Practice Guide, Landlord-Tenant, Paragraphs 7:368-7:380 (Rutter Group 1996).*

[164] *Civil Code Section 1942.5(c).*

[165] *Government Code Sections 12955(f), 12955.7.*

[166] *California Practice Guide, Landlord-Tenant, Paragraphs 7:205, 7:391 (Rutter Group 1996).*

[167] *Civil Code Sections 1961, 1962, 1962.5.*

- Local dispute resolution program. To order a county-by-county list, see page 56.
- Local tenant information and assistance resources. See list on page 51.

You may also obtain information from the California Department of Consumer Affairs' Consumer Information Center at 1-800-952-5210 (1-916-445-1254 for Sacramento area calls). For TDD, call 1-800-326-2297 (1-916-322-1700 for Sacramento area calls).

Many county bar associations offer lawyer referral services and volunteer attorney programs which can help a tenant locate a low-fee or free attorney. **Legal aid organizations** may provide **eviction** defense service to low-income tenants. Some law schools offer free advice and assistance through landlord-tenant clinics.

Tenants should be cautious about using so-called eviction defense clinics or bankruptcy clinics. While some of these clinics may be legitimate and provide good service, others are not legitimate. Some of these clinics may use high-pressure sales tactics, make false promises, obtain your signature on blank forms, take your money, and then do nothing.

These clinics may promise to get a **federal stay** of an eviction action. This usually means that the clinic intends to file a bankruptcy petition for the tenant. While this may stop the eviction temporarily, it can have an extremely bad effect on the tenant's future ability to rent property or to obtain credit, since the bankruptcy will be part of the tenant's credit record *for as long as 10 years*.

"Unlawful detainer assistants" are nonlawyers who are in business to provide advice and assistance to landlords and tenants on unlawful detainer issues. Unlawful detainer assistants (UDAs) must be registered with the County Clerk's office in the counties where they live and provide services.[168] The fact that a UDA is properly registered with the County Clerk does not assure you that he or she is any more knowledgeable or competent than a person who is not registered. A tenant who signs a contract with a UDA can cancel the contract within 24 hours after signing it.[169]

Arbitration and Mediation

Some local housing agencies refer landlord-tenant disputes to a local dispute resolution center or mediation service. The goal of these services is to resolve disputes without the burden and expense of going to court.

Mediation involves assistance from an impartial third person who helps the tenant and landlord reach a voluntary agreement on how to settle the dispute. The mediator does not make a binding decision in the case.

Arbitration involves referral of the dispute to an impartial third person, called an **arbitrator**, who decides the case. If the landlord and tenant agree to submit their dispute to arbitration, they will be bound by the decision of the arbitrator, unless they agree to nonbinding arbitration.

Tenants and landlords should always consider resolving their disputes by mediation or arbitration instead of a lawsuit. Mediation is almost always faster, cheaper, and less stressful than going to court. While arbitration is more formal than mediation, arbitration can be faster, and is usually less stressful and burdensome, than a court action.

Mediation services are listed in the yellow pages of the telephone book under *Mediation Services*. To obtain a county-by-county listing of dispute resolution services, see page 56.

[168] *Business and Professions Code Sections 6400-6415.*

[169] *Business and Professions Code Section 6410(e). The contents of the UDA's contract are governed by regulation. See 16 California Code of Regulations, Section 3850.*

GLOSSARY

[All words in **boldface** type are explained in this Glossary. The number at the end of each explanation refers to the page in the text where the term is discussed.]

abandon/abandonment—the tenant's remedy of moving out of a **rental unit** that is **uninhabitable** and that the landlord has not repaired within a reasonable time after receiving notice of the defects from the tenant. (24)

appeal—a request to a higher court to review a lower court's decision in a lawsuit. (41)

Application for Waiver of Court Fees and Costs—a form that tenants may complete and give to the Clerk of Court to request permission to file court documents without paying the court filing fee. (40)

arbitration—using a neutral third person to resolve a dispute instead of going to court. Unless the parties have agreed otherwise, the parties must follow the arbitrator's decision. (44)

arbitrator—a neutral third person, agreed to by the parties to a dispute, who hears and decides the dispute. An arbitrator is not a judge, but the parties must follow the arbitrator's decision (the decision is said to be "binding" on the parties). (See **arbitration**.) (44)

assign/assignment—an agreement between the original tenant and a new tenant by which the new tenant takes over the lease of a rental unit and becomes responsible to the landlord for everything that the original tenant was responsible for. The original tenant is still responsible to the landlord if the new tenant doesn't live up to the lease obligations. (Compare to **sublease**.) (19)

California Department of Fair Employment and Housing—the state agency that investigates complaints of unlawful discrimination in housing and employment. (9)

Claim of Right to Possession—a form that the occupants of a rental unit can fill out to temporarily stop their eviction by the sheriff after the landlord has won an **unlawful detainer (eviction) lawsuit**. The occupants can use this form only if the landlord did not serve a **Prejudgment Claim of Right to Possession** form with the summons and complaint; the occupants were not named in the **writ of possession;** and the occupants have lived in the rental unit since before the unlawful detainer lawsuit was filed. (50)

credit report—a report prepared by a **credit reporting service** that describes a person's credit history for the last seven years (except for bankruptcies, which are reported for 10 years). A credit report shows, for example, whether the person pays his or her bills on time, has delinquent or charged-off accounts, has been sued, and is subject to court judgments. (6)

credit reporting service—a business that keeps records of people's credit histories, and that reports credit history information to prospective creditors (including landlords). (6)

default judgment—a judgment issued by the court, without a hearing, after the tenant has failed to file a response to the landlord's complaint. (39, 41)

Demurrer—a legal response that a tenant can file in an **unlawful detainer lawsuit** to test the legal sufficiency of the charges made in the landlord's complaint. (39)

discrimination (in renting)—denying a person housing, telling a person that housing is not available (when the housing is actually available at that time), providing housing under inferior terms, or providing segregated housing because of a person's race, color, national origin, ancestry, religion, sex, sexual preference, age, disability, whether the person is married, or whether there are children under the age of 18 in the person's household. Discrimination also can be refusal to make reasonable accommodation for a person with a disability. (8)

escrow account—a bank account into which a tenant deposits withheld rent, to be withdrawn only when the landlord has corrected uninhabitable conditions in the rental unit or when the tenant is ordered by a court to pay withheld rent to the landlord. (26)

eviction—a court-administered proceeding for removing a tenant from a rental unit because the tenant has violated the rental agreement or did not comply with a notice ending the tenancy (also called an **"unlawful detainer" lawsuit**). (35)

eviction notice (or **three-day notice)—**a three-day notice that the landlord serves on the tenant when the tenant has violated the lease or rental agreement. The three-day notice usually instructs the tenant to either leave the rental unit or comply with the lease or rental agreement (for example, by paying past-due rent) within the three-day period. (17, 36)

fair housing organizations—city or county organizations that help renters resolve housing discrimination problems. (9)

federal stay—an order of a federal bankruptcy court that temporarily stops proceedings in a state court, including an **eviction** proceeding. (44)

guest—a person who does not have the rights of a tenant, such as a person who stays in a transient hotel for fewer than seven days. (2)

habitable—a rental unit that is fit for human beings to live in. A rental unit that substantially complies with those building and safety code standards that materially affect tenants' health and safety is said to be "habitable." See **uninhabitable** and **implied warranty of habitability**. (20)

holding deposit—a deposit that a tenant gives to a landlord to hold a rental unit until the tenant pays the first month's rent and the security deposit. (7)

implied warranty of habitability—a legal rule that requires landlords to maintain their rental units in a condition fit for human beings to live in. The basic minimum requirements for a rental unit to be habitable are listed on page 21. In addition, a rental unit must substantially comply with building and housing code standards that materially affect tenants' health and safety. (See page 22.) (20-22)

item of information—information in a **credit report** that causes a creditor to deny credit or take other adverse action against an applicant (such as refusing to rent a rental unit to the applicant). (7)

landlord—a business or person who owns a rental unit, and who rents or leases the rental unit to another person, called a **tenant.** (2)

lease—a rental agreement, usually in writing, that establishes all the terms of the agreement and that lasts for a predetermined length of time (for example, six months or one year). Compare to **periodic rental agreement.** (11)

legal aid organizations—organizations that provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. (44, 51)

lockout—when a landlord locks a tenant out of the rental unit with the intent of terminating the tenancy. Lockouts, and all other self-help eviction remedies, are illegal. (38)

lodger—a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger, and has overall control of the house. (3)

mediation—a process in which a neutral third person meets with the parties to a dispute in order to assist them in formulating a voluntary solution to the dispute. (44)

Memorandum to Set for Trial—a court document that notifies the parties in an **unlawful detainer lawsuit** that the case has been set for trial. This document also states whether the plaintiff (the landlord) has requested a jury trial. (40)

Motion to Quash Service of Summons—a legal response that a tenant can file in an **unlawful detainer lawsuit** if the tenant believes that the landlord did not properly serve the summons and complaint. (39)

negligence—a person's carelessness (that is, failure to use ordinary or reasonable care) that results in injury to another person or damage to another person's property. (15)

novation—in an **assignment** situation, a novation is an agreement by the landlord, the original tenant, and the new tenant that makes the new tenant (rather than the original tenant) solely responsible to the landlord. (20)

periodic rental agreement—an oral or written rental agreement that states the length of time between rent payments—for example, a week or a month—but not the total number of weeks or months that the agreement will be in effect. (10)

Prejudgment Claim of Right to Possession—a form that a landlord in an **unlawful detainer (eviction) lawsuit** can have served along with the summons and complaint on all persons living in the rental unit who might claim to be tenants, but whose names the landlord does not know. Occupants who are not named in the unlawful detainer complaint, but who claim a right to possess the rental unit, can fill out and file this form to become parties to the unlawful detainer action. (49)

prepaid rental listing services—businesses that sell lists of available rental units. (4)

relief from forfeiture—an order by a court in an **unlawful detainer (eviction) lawsuit** that allows the losing tenant to remain in the rental unit, based on the tenant's ability to pay all of the rent that is due, or to otherwise fully comply with the lease. (41)

rent control ordinances—laws in some communities that limit or prohibit rent increases, or that limit the circumstances in which a tenant can be evicted. (16)

rent withholding—the tenant's remedy of not paying some or all of the rent if the landlord does not fix defects that make the rental unit **uninhabitable** within a reasonable time after the landlord receives notice of the defects from the tenant. (25)

rental agreement—an oral or written agreement between a tenant and a landlord, made before the tenant moves in, which establishes the terms of the tenancy, such as the amount of the rent and when it is due. See **lease** and **periodic rental agreement.** (10)

rental application form—a form that a landlord may ask a tenant to fill out prior to renting that requests information about the tenant, such as the tenant's address, telephone number, employment history, credit references, and the like. (6)

rental period—the length of time between rental payments; for example, a week or a month. (16)

rental unit—an apartment, house, duplex, or condominium that a landlord rents to a tenant to live in. (2)

renter's insurance—insurance protecting the tenant against property losses, such as losses from theft or fire. This insurance usually also protects the tenant against liability (legal responsibility) for claims or lawsuits filed by the landlord or by others alleging that the tenant negligently injured another person or property. (15)

repair and deduct remedy—the tenant's remedy of deducting from future rent the amount necessary to repair defects covered by the **implied warranty of habitability**. The amount deducted cannot be more than one month's rent. (23)

residential hotel—a building containing six or more guest rooms or efficiency units which are rented for occupation or for sleeping purposes by guests, and which also are the primary residence of these guests. (See **guest**.) (3)

retaliatory eviction or action—an act by a landlord, such as raising a tenant's rent, seeking to evict a tenant, or otherwise punishing a tenant because the tenant has used the **repair and deduct remedy** or the **rent withholding** remedy, or has asserted other tenant rights. (42)

security deposit—a deposit or a fee that the landlord requires the tenant to pay at the beginning of the tenancy to protect the landlord, for example, if the tenant moves out owing rent, or leaves the rental unit damaged or less clean than when the tenant moved in. (14)

serve/service—legal requirements and procedures that seek to assure that the person to whom a legal notice is directed actually receives it. (37)

sublease—a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. The new tenant is called a "subtenant." The agreement between the original tenant and the landlord remains in force, and the original tenant continues to be responsible for paying the rent to the landlord and for other tenant obligations. (Compare to **assignment.)** (19)

subpoena—an order from the court that requires the recipient to appear as a witness or provide evidence in a court proceeding. (40)

subtenant—see **sublease**.

tenancy—the tenant's exclusive right, created by a **rental agreement** between the landlord and the tenant, to use and possess the landlord's **rental unit.** (10)

tenant—a person who rents or leases a **rental unit** from a **landlord**. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period. (2)

tenant screening service—a business that collects and sells information on tenants, such as whether they pay their rent on time and whether they have been defendants in **unlawful detainer lawsuits**. (6)

thirty-day notice/three-day notice—see **eviction notice.**

uninhabitable—a **rental unit** which has such serious problems or defects that the tenant's health or safety is affected is "uninhabitable." A rental unit may be uninhabitable if it is not fit for human beings to live in, or if it fails to substantially comply with building and safety code standards that materially affect tenants' health and safety. (Compare to **habitable**.) (21)

unlawful detainer lawsuit—a lawsuit that a landlord must file and win before he or she can evict a tenant (also called an **"eviction"** lawsuit). (38)

U.S. Department of Housing and Urban Development—the federal agency that enforces the federal fair housing law, which prohibits discrimination based on sex, race, religion, national or ethnic origin, familial status, or mental handicap. (9)

waive—to sign a written document (a "waiver") giving up a right, claim, privilege, etc. In order for a waiver to be effective, the person giving the waiver must do so knowingly, and must know the right, claim, privilege, etc. that he or she is giving up. (49)

writ of possession—a document issued by the court after the landlord wins an **unlawful detainer** (**eviction**) **lawsuit**. The writ of possession is served on the tenant by the sheriff. The writ informs the tenant that the tenant must leave the rental unit within five days, or the sheriff will forcibly remove the tenant. (41)

APPENDIX 1—PRETRIAL RENT DEPOSIT PROGRAM

Courts Participating in Program

Between July 1, 1995 and July 1, 1999, the following southern California courts will participate in an experimental pretrial rent deposit program:

- El Cajon Municipal Court.
- Downey Municipal Court.
- Los Angeles Municipal Court.
- San Bernardino Municipal Court.
- Santa Maria Municipal Court.
- Consolidated Superior and Municipal Courts of Riverside County (encompassing most of the courts in Riverside County).[170]

Tenants who are defendants in **unlawful detainer** (**eviction**) **lawsuits** in these courts may be required to deposit future rent with the court before they can defend themselves.

This appendix summarizes the key features of the pretrial rent deposit program.

Landlord's Complaint

In the courts that participate in the program, the plaintiff (the **landlord)** may include in the unlawful detainer summons and complaint a demand that the **tenant** deposit future rent with the court clerk before trial.[171] The landlord must first have served a **three-day notice** to pay rent or quit, and there cannot be any outstanding citations against the **rental unit** for violations of health, safety, housing, building or fire laws.[172] The amount of future rent demanded cannot be more than 15 days' rent (up to a maximum of $500).[173]

Tenant's Reply: Form or Deposit and Responsive Pleading

The landlord's summons and complaint must be accompanied by a reply form.[174] If the tenant returns the reply form within five days of receipt of the summons and complaint, no deposit of rent is required before the pretrial hearing,[175] and depending on the judge's decision at that hearing, the tenant may not have to deposit any rent before the trial.[176] The reply form allows the tenant to inform the court and the landlord that the tenant denies the allegations of the complaint and intends to appear and defend the action.[177]

The tenant may return the reply form to the court in person or mail it by certified mail, return receipt requested.[178] If the reply form is mailed, it must be postmarked within five days from receipt of the summons and complaint.[179]

If the tenant does not return the reply form, the tenant must deposit the future rent as demanded no later than the day of the pretrial hearing.[180] If the tenant does not return the form and does not deposit the future rent, the court must enter judgment for possession for the landlord at the pretrial hearing.[181] The tenant must respond to the complaint by an answer or other responsive pleading, even if the tenant returns the reply form.[182]

Pretrial Hearing

The pretrial hearing must be held between 8 and 13 days after the landlord files the proof of service of the summons and complaint.[183]

[170] *Code of Civil Procedure Section 1167.2(a).*
[171] *Code of Civil Procedure Section 1167.2(b)(1).*
[172] *Code of Civil Procedure Sections 1167.2(b)(1),(c)(1)(A),(d).*
[173] *Code of Civil Procedure Section 1167.2(e).*
[174] *Code of Civil Procedure Section 1167.2(b)(2).*
[175] *Code of Civil Procedure Sections 1167.2(b)(2)(A),(B).*
[176] *Code of Civil Procedure Section 1167.2(c)(1).*
[177] *Code of Civil Procedure Section 1167.2(b)(2).*
[178] *Code of Civil Procedure Section 1167.2(b)(2)(A).*
[179] *Code of Civil Procedure Section 1167.2(b)(2)(A).*
[180] *Code of Civil Procedure Section 1167.2(b)(2)(C).*
[181] *Code of Civil Procedure Section 1167.2(b)(2)(C).*
[182] *See Code of Civil Procedure Sections 1167.2(c)(1),(3).*
[183] *Code of Civil Procedure Section 1167.2(b)(3).*

Attorneys generally are excluded from pretrial hearings in Los Angeles.[184] At the hearing, the court may consider only declarations, documentary evidence, the parties' oral testimony, and the defendant's answer or other response to the complaint.[185]

Among other issues at the pretrial hearing, the court must determine whether there is any substantial conflict as to any material fact relevant to the unlawful detainer.[186] If the court finds no such conflict (and makes other specified findings), it may require the tenant to deposit the future rent with the clerk of court.[187] However, the court may not order any deposit if the tenant has already paid (or deposited) all rent through the month in which the action was filed, or if there is an outstanding citation against the rental premises.[188]

Some courts participating in the program may ask the tenant to **waive** (give up) the pretrial hearing and proceed with the unlawful detainer trial at the time that the pretrial hearing was scheduled. The court can only make this request to a tenant who is represented by an attorney. If the tenant agrees to proceed to trial and loses, the court will enter judgment against the tenant for eviction and money damages.[189] The tenant should consult his or her attorney and think carefully about giving up the right to a pretrial hearing.

Tenant's Deposit

The tenant must make the deposit ordered by the court within two court days after the pretrial hearing.[190] If the tenant did not return the reply form, however, he or she must deposit the amount ordered by the court on the day of the pretrial hearing.[191] If the tenant fails to make the deposit as required, the court must enter judgment for possession for the landlord.[192]

If the case proceeds to trial, the judge must determine whether the landlord or the tenant is entitled to the deposit. Depending on the **habitability** of the premises, the judge also may reduce (or eliminate) the tenant's liability for rent.[193]

Exceptions to Program

The pretrial rent deposit provisions do not apply to actions for possession of mobilehomes or manufactured homes, or to actions for possession of real property in mobilehome parks or manufactured housing communities.[194]

APPENDIX 2—OCCUPANTS NOT NAMED IN EVICTION LAWSUIT OR WRIT OF POSSESSION

Occupants Not Named in Eviction Lawsuit

People who are not named as **tenants** in the **rental agreement** or **lease** sometimes move into a rental unit before the **landlord** files the **unlawful detainer (eviction) lawsuit.** The landlord may not know that these people (called "occupants") are living in the rental unit, and therefore may not name them as defendants in the summons and complaint. As a result, these occupants are not named in the **writ of possession** if the landlord wins the unlawful detainer action. A sheriff enforcing the writ of possession cannot lawfully evict an occupant whose name does not appear on the writ of possession and who claims to have lived in the unit since before the unlawful detainer lawsuit was filed. (See "Writ of possession," page 41.)

The landlord can take steps to avoid this result. The landlord can instruct the process server who **serves** the summons and complaint on the named defendants to ask whether there are other occupants living in the unit who have not been named as defendants. If there are, the person serving the summons and complaint can serve each of the so-called "unnamed occupants" with a blank **Prejudgment Claim of Right to Possession** form and an extra copy of the summons and complaint.[195]

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[184] *Code of Civil Procedure Sections 1167.2(c)(2),(3).*
[185] *Code of Civil Procedure Sections 1167.2(c)(1)-(3).*
[186] *Code of Civil Procedure Section 1167.2(c)(1).*
[187] *Code of Civil Procedure Section 1167.2(c)(1).*
[188] *Code of Civil Procedure Section 1167.2(d).*
[189] *Code of Civil Procedure Sections 1167.2(b)(3),(c)(4).*
[190] *Code of Civil Procedure Section 1167.2(c)(1).*
[191] *Code of Civil Procedure Section 1167.2(c)(1).*
[192] *Code of Civil Procedure Section 1167.2(c)(1).*
[193] *Code of Civil Procedure Sections 1167.2(f),(g); see these sections for additional details.*
[194] *Code of Civil Procedure Section 1167.2(h).*
[195] *Code of Civil Procedure Section 415.46.*

These occupants then have 10 days from the date they are served to file a Prejudgment Claim of Right to Possession form with the Clerk of Court, and to pay the clerk the required filing fee (or file an **"Application for Waiver of Court Fees and Costs"** if they are unable to pay the filing fee). Any unnamed occupant who does not file a Prejudgment Claim of Right to Possession form with the Clerk of Court (along with the filing fee or a request for **waiver** of the fee) can then be evicted.

An unnamed occupant who files a Prejudgment Claim of Right to Possession form automatically becomes a defendant in the unlawful detainer lawsuit, and must file an answer to the complaint within five days after filing the form. The court then rules on the occupant's defense to the eviction along with the defenses of the other defendants.[196] If the landlord wins, the occupant cannot delay the eviction, whether or not the occupant is named in the writ of possession issued by the court.[197]

Occupants Not Named in Writ of Possession

The landlord sometimes does not serve a Prejudgment Claim of Right to Possession form on the unnamed occupants when the unlawful detainer complaint is served. When the sheriff arrives to enforce the writ of possession (that is, to evict the tenants [see "Writ of possession," page 41]), an occupant whose name does not appear on the writ of possession, and who claims a right of possession, may fill out a **Claim of Right to Possession** form and give it to the sheriff. The sheriff must then stop the **eviction** of the occupant, and must give the occupant a copy of the completed form or a receipt for it.[198]

Within two business days after completing the form and giving it to the sheriff, the occupant must deliver to the Clerk of Court the court's filing fee (or file an "Application for Waiver of Court Fees and Costs" if the occupant is unable to pay the filing fee). The occupant also should deliver to the court an amount equal to 15 days' rent for the rental unit (the writ of possession must state the daily rental value of the rental unit).

Five to fifteen days after the occupant has paid the filing fee (or has filed a request for waiver of the fee), and has deposited an amount equal to 15 days' rent, the court will hold a hearing. If the occupant does not deposit the 15 days' rent, the court will hold the hearing *within 5 days.*

At the hearing, the court will decide whether or not the occupant has a valid claim to possession. If the court decides that the occupant's claim to possession is valid, the amount of rent deposited will be returned to the occupant. The court will then order further proceedings, as appropriate to the case (for example, the occupant may be given five days to answer the landlord's complaint).

If the court finds that the occupant's claim to possession is not valid, an amount equal to the daily rent for each day the eviction was delayed will be subtracted from the rent that is returned to the occupant, and the sheriff or marshal will continue with the eviction.[199]

APPENDIX 3—LIST OF CITIES WITH RENT CONTROL

Berkeley
Beverly Hills
Campbell
Cotati
East Palo Alto
Hayward
Los Angeles
Los Gatos
Oakland
Palm Springs
San Francisco
San Jose
Santa Monica
Thousand Oaks
West Hollywood
Westlake Village

[196] *Code of Civil Procedure Section 1174.25.*
[197] *Code of Civil Procedure Section 415.46.*
[198] *Code of Civil Procedure Section 1174.3.*
[199] *Code of Civil Procedure Section 1174.3.*

APPENDIX 4—TENANT INFORMATION AND ASSISTANCE RESOURCES

[This listing (updated periodically) is available through the Department of Consumer Affairs' homepage at www.dca.ca.gov (beginning March, 1998).]

ALAMEDA COUNTY

Berkeley Rent Stabilization Board
2125 Milvia Street
Berkeley, CA 94704
(510) 644-6128

City of Fremont - Office of Housing Services
39550 Liberty Street, Second Floor
Fremont, CA 94538
(510) 494-4506

Eden Council for Hope and Opportunity, Inc. (ECHO)
770 A Street
Hayward, CA 94541
(510) 581-9380

Berkeley (510) 845-9030
Livermore (510) 449-7340
Oakland (510) 836-4826

Housing Rights, Inc.
2718 Telegraph Street, No. 100
Berkeley, CA 94704
(510) 548-8776

Legal Aid Society of Hayward
22531 Watkins Street
Hayward, CA 94541
(510) 538-6507

Tenant Action Project
2022 Blake Street, Room E
Berkeley, CA 94704
(510) 843-6601

BUTTE COUNTY

Community Legal Information Center
West 2nd & Cherry Street
Chico, CA 95929
(916) 898-4354

Legal Services of Northern California Butte Regional Office
541 Normal Avenue
Chico, CA 95929
(916) 345-9491

CONTRA COSTA COUNTY

City of Concord
1950 Parkside Drive, MS 27
Concord, CA 94519
(925) 671-3364

Pacific Community Services
329 Railroad Avenue
Pittsburg, CA 94565
(510) 439-1056

Rental Housing Association for Solano, Napa, & Contra Costa County
1070 Concord Avenue, Suite 120
Concord, CA 94520
(510) 686-3234
(800) 600-8001

Shelter, Inc.
1070 Concord Avenue, Suite 200
Concord, CA 94520
(510) 827-5515

DEL NORTE COUNTY

(See Humboldt County)

FRESNO COUNTY

Central California Legal Services
2014 Tulare Street, Suite 600
Fresno, CA 93721
(209) 441-1611

Centro La Familia de Fresno
2014 Tulare Avenue
Fresno, CA 93721
(209) 237-2961

HUMBOLDT COUNTY

Redwood Legal Assistance
123 Third Street
Eureka , CA 95501
(707) 445-0866

KERN COUNTY

Bakersfield City for Fair Housing
515 Truxton Avenue
Bakersfield, CA 93301
(805) 326-3765

Kern County Fair Housing Division
2700 M Street, Suite 250
Bakersfield, CA 93301
(805) 862-5299

LOS ANGELES COUNTY

Bet Tzedek Legal Services
145 South Fairfax Ave., No. 200
Los Angeles, CA 90036
(213) 939-0506

Consumer Affairs Protection Unit and Fair Housing
1685 Main Street
Santa Monica, CA 90401
(310) 458-8336

Fair Housing Council of the San Fernando Valley
8124 Van Nuys Blvd., Suite 206
Panorama, CA 91402
(818) 373-1185

Long Beach Fair Housing Administration
200 Pine Avenue, Suite 240
Long Beach, CA 90802
(310) 901-0808

Los Angeles County Department of Consumer Affairs
500 West Temple Street, Room B-96
Los Angeles, CA 90012-2706
(213) 974-1452 (24-hr recorded info.)

Los Angeles County Department of Consumer Affairs–East Los Angeles Service Center
133 North Sunol Drive
Los Angeles, CA 90063
(213) 260-2893 (Mon, Thurs)

Los Angeles County Department of Consumer Affairs–Florence Firestone Service Center
7807 South Compton Avenue
Los Angeles, CA 90001
(213) 586-6508 (Mon, Wed)

Los Angeles County Department of Consumer Affairs–Lancaster Public Library
601 West Lancaster Boulevard
Lancaster, CA 93534
(805) 726-7550 (Fri 10-3)

Los Angeles County Department of Consumer Affairs–San Gabriel Service Center
3017 Tyler Avenue
El Monte, CA 91731
(626) 575-5425 (Mon 8-5, Fri 8-4)

Los Angeles County Department of Consumer Affairs–South Bay/Lomita Center
24340 South Narbonne Avenue
Lomita, CA 90717
(310) 325-1035 (Tues, Thurs)

Los Angeles County Department of Consumer Affairs–Valencia/Court House
23747 West Valencia Blvd.
Valencia, CA 91355
(805) 253-7328 (Thurs only)

Los Angeles County Department of Consumer Affairs–Van Nuys Office
6320 Van Nuys Blvd., Suite 504
Van Nuys, CA 91411
(818) 901-3829 (Tues, Wed)

San Fernando Valley Neighborhood Legal Services Program
13327 Van Nuys Blvd.
Pacoima, CA 91331
(818) 896-5211

San Gabriel Valley Fair Housing Council
1020 North Fair Oaks Avenue
Pasadena, CA 91103
(626) 791-0211

(800) 346-2883

Santa Monica Rent Control Board
1685 Main Street, No. 202
Santa Monica, CA 90401
(310) 458-8751

Culver City Housing Agency
(Note – Contracts w/ Westside Fair Housing Council)
1849 Sawtelle Boulevard, No. 670
Los Angeles, CA 90025
(310) 477-9260

Westside Fair Housing Council
10537 Santa Monica Boulevard, Suite 320
Los Angeles, CA 90043
(310) 474-1667

MARIN COUNTY

Fair Housing Program of Marin County
615 B Street
San Rafael, CA 94901
(415) 457-5025

Landlord/Tenant Division of Marin County
4 Mt. Lassen Drive
San Rafael, CA 94903
(415) 499-7493

MERCED COUNTY

Merced Legal Services
357 West Main Street, Suite 201
Merced, CA 95340
(209) 723-5466

MONTEREY COUNTY

Conflict Resolution/Mediation Center of Monterey County
256 Garden Road, Suite 109
Monterey, CA 93940
(408) 649-6219

NAPA COUNTY

Napa County Rental Information and Mediation Services
1714 Jefferson Street
Napa, CA 94559
(707) 253-2700

ORANGE COUNTY

Fair Housing Council of Orange County
1666 North Main Street, Suite 500
Santa Ana, CA 92701
(714) 569-0823

PLACER COUNTY

Legal Services of Northern California
190 Reamer Street
Auburn, CA 95603
(530) 823-7560
(800) 660-6107

RIVERSIDE COUNTY

Fair Housing Council of Riverside County Inc.
3600 Lime Street, Suite 613
Riverside, CA 92501
(909) 682-6581 or (800) 655-1812

SACRAMENTO COUNTY

Calfornia Apartment Association
980 9th Street, Suite 2150
Sacramento, CA 95814
(916) 447-7881

Human Rights/Fair Housing Commission
1112 I Street, Suite 250
Sacramento, CA 95814
(916) 444-6903

Human Rights Fair Housing Commission for the City and County of Sacramento
2131 Capitol Ave, Suite 206
Sacramento, CA 95816
(916) 444-0178

Legal Center for the Elderly and Disabled
1605 Dreher Street
Sacramento, CA 95814
(916) 446-4851

Legal Services of Northern California
515 12th Street
Sacramento, CA 95814
(916) 551-2150

Sacramento Mediation Center
1220 H Street, Suite 103
Sacramento, CA 95814
(916) 441-7979

SAN BERNARDINO COUNTY

Fair Housing Council of San Bernardino County
P.O. Box 6705
San Bernardino, CA 92412-6705
(909) 884-8056

Inland Mediation Board
1005 Begonia Avenue
Ontario, CA 91762
(909) 984-2254

SAN DIEGO COUNTY

Heartland Human Relations and Fair Housing
4710 4th Street, Suite 500
La Mesa, CA 91941
(619) 464-7313 or
(619) 460-2744

Legal Aid Society of San Diego
110 South Euclid
San Diego, CA 92114
(619) 262-5557

Neighborhood House Association
841 South 41st Street
San Diego, CA 92113
(619) 715-2642 or
(900) 505-5663 (the charge is $2.50 for the first minute and $.54 for each additional minute)

San Diego Housing Commission
1625 Newton Avenue
San Diego, CA 92113
(619) 525-3610

San Diego Mediation Center
625 Broadway, Suite 1221
San Diego, CA 92101
(619) 238-2400

Tenants Legal Center
5252 Balboa Avenue, Suite 408
San Diego, CA 92117
(619) 571-7100

SAN FRANCISCO COUNTY

Asian Law Caucus
720 Market Street, Suite 500
San Francisco, CA 94102
(415) 391-1655

Consumer Action Hot Line
717 Market Street, #310
San Francisco, CA 94103
(415) 777-9635

Housing Rights Committee of San Francisco
942 Market Street, Suite 303
San Francisco, CA 94102
(415) 398-0527

National Center for Youth Law
114 Sansome Street, No. 900
San Francisco, CA 94104
(415) 543-3307

San Francisco County District Attorney–Consumer Protection Unit
732 Brandon Street
San Francisco, CA 94103
(415) 553-1814

San Francisco Human Rights Commission
25 Van Ness Avenue, Suite 800
San Francisco, CA 94102
(415) 252-2500

San Francisco Rent Board
25 Van Ness Avenue, Suite 320
San Francisco, CA 94102-6033
(415) 252-4600

San Francisco Tenant Union
558 Capp Street
San Francisco, CA 94110
(415) 282-6622

Tenderloin Housing Clinic
126 Hyde Street
San Francisco, CA 94102
(415) 771-2427

SAN JOAQUIN COUNTY

California Rural Legal Assistance
242 North Sutter, Room 411
Stockton, CA 95202
(209) 946-0605

SAN LUIS OBISPO COUNTY

Calfornia Rural Legal Assistance
1160 Marsh Street, Suite 114
San Luis Obispo, CA 93401
(805) 544-7994

San Luis Obispo County Government Center–Economic Crime Unit
1050 Monterey Street, Room 235
San Luis Obispo, CA 93408
(805) 781-5856

SAN MATEO COUNTY

San Mateo County District Attorney–Consumer Fraud Unit
401 Marshall Street
Redwood City, CA 94063
(415) 363-4651

San Mateo County Mediation Program
520 South El Camino Real, Suite 640
San Mateo, CA 94402
(415) 802-5034

SANTA BARBARA COUNTY

California Rural Legal Assistance
2050 South Broadway, Suite G
Santa Maria, CA 93454
(805) 922-4563

SANTA CLARA COUNTY

Legal Aid/Housing Project
480 North 1st Street
San Jose, CA 95112
(408) 998-5200

Mid-Peninsula Citizens for Fair Housing
457 Kingsley Avenue
Palo Alto, CA 94301
(415) 327-1718

Project Sentinel
7365 Monterey Road, Suite D
Gilroy, CA 95020
(408) 842-7740

Project Sentinel
1055 Sunnyvale Saratoga Road, Suite 3
Sunnyvale, CA 94087
(408) 720-9888

Project Sentinel
430 Sherman Avenue, Suite 308
Palo Alto, CA 94306
(415) 468-7464

Santa Clara District Attorney's Office
70 West Hedding Street
San Jose, CA 95110
(408) 299-7500

SANTA CRUZ COUNTY

Legal Aid of the Central Coast
21 Car Street
Watsonville, CA 95076
(408) 688-6535

Santa Cruz District Attorney's Office
701 Ocean Street, Room 200
Santa Cruz, CA 95060
(408) 454-2050

SHASTA COUNTY

Legal Services of North California - Shasta Regional Office
1370 West Street
Redding, CA 96001
(916) 241-3565 or
(800) 822-9687

SOLANO COUNTY

Legal Services of Northern California–Solano
1810 Capitol Street
Vallejo, CA 94590
(707) 643-0054

SONOMA COUNTY

Sonoma County Rental Information and Mediation Services Inc.
324 Santa Rosa Avenue
Santa Rosa, CA 95404
(707) 575-8787

TULARE COUNTY

Central California Legal Services–Tulare Kings Legal Service
208 West Main Street, Suite U-1
Visalia, CA 93291
(209) 733-8770

VENTURA COUNTY

Commission and Concerns
621 Richmond Avenue
Oxnard, CA 93030
(805) 486-4725

Fair Housing Institute
2045 Saviers Road, Suite 11
Oxnard, CA 93033
(805) 385-7288
(888) 777-4087 (Toll Free)

Human Services for the City of Oxnard
305 West Third Street, Suite 320
Oxnard, CA 93030
(805) 385-7434

Ventura County District Attorney–Consumer Mediation Unit
800 South Victoria Avenue
Ventura, CA 93009
(805) 654-3110

YOLO COUNTY

Community Mediation Services and Office of Fair Housing
604 Second Street
Davis, CA 95616
(916) 757-5623

STATE DEPARTMENTS

Department of Consumer Affairs
400 R Street
Sacramento, CA 95814
(800) 952-5210 TDD (800) 326-2297
(916) 445-1254 TDD (916) 322-1700

Department of Fair Employment and Housing
2000 O Street, No. 120
Sacramento, CA 95814
(housing discrimination complaints only)
(800) 233-3212
(916) 445-9918

Department of Real Estate
2201 Broadway
Sacramento, CA 95818
(916) 227-0864 Consumer Info.
(916) 227-0931 Licensing Info.

APPENDIX 5—OTHER RESOURCES

Publications on Landlord-Tenant Law

Books

Brown and Warner, *The Landlord's Law Book, Vol. I, Rights and Responsibilities* (NOLO Press 1996).

Department of Consumer Affairs, *Consumer Law Sourcebook for Small Claims Judicial Officers*, Ch. 18, Landlord-Tenant Disputes (1996).

Friedman et al., *California Practice Guide: Landlord-Tenant* (Rutter Group 1996).

Moskovitz and Warner, *Tenants' Rights* (NOLO Press 1996).

Moskovitz et al., *California Eviction Defense Manual* (California Continuing Education of the Bar 1997).

Moskovitz et al., *California Landlord-Tenant Practice* (California Continuing Education of the Bar 1997).

These books are available at county and university law libraries.

Department of Consumer Affairs–Legal Guides

LT-1 Security Deposits: Tenants' Rights and Responsibilities

LT-2 How Often Can a Landlord Raise Rent?

LT-3 Rental Housing: Who's Responsible for What and How to Get Repairs Made

LT-4 How to Get Back Possessions You Have Left in a Rental Unit

LT-5 Options for Landlord: When Tenant's Personal Property Has Been Left in the Rental Unit

LT-6 Damaged or Destroyed Residential Rental Units: A Fact Sheet for Landlords and Tenants

LT-8 Habitability and Repairs: Outline of the Landlord's and Tenant's Responsibilities Under the California Civil Code

These Legal Guides are available through the Department's homepage at www.dca.ca.gov. They also are available in hard copy. Write the Department of Consumer Affairs, Publications, P.O. Box 310, Sacramento, CA 95802, or call 1-800-952-5210. Please specify Legal Guides by number and name.

Other Department of Consumer Affairs Publications

Arbitration/Mediation

California Dispute Resolution Programs Act: Program Directory (Lists arbitration and mediation programs by county).

Small Claims Court

Small Claims Advisors Directory (Lists small claims court advisors by county).

Using the Small Claims Court: A Handbook for Plaintiffs and Defendants.

These publications can be obtained by writing the Department of Consumer Affairs, Publications, P.O. Box 310, Sacramento, CA 95802, or by calling the Department at 1-800-952-5210. Please specify publication by name.

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Glossary terms, court forms, and government agencies are in **boldface type**. Page numbers containing definitions of terms are in **boldface type.**

Inventory Checklist

This inventory form is for the protection of both the tenant and landlord.

You and your landlord should fill it out within three days of your moving in. Then, at least one week before moving out, you should arrange a time to make the final inspection. Both you and your landlord should sign and receive a copy of the form following each inspection.

In completing the form, be specific and check carefully. Among the things you should look for are dust, dirt, grease, stains, burns, damage, and wear.

Additions to this list may be made as necessary. Attach additional paper if more space is needed, but remember to include a copy for both parties. Both parties should initial any additional pages. Cross out items that do not apply.

Apartment Name and Address _____

Unit No. _____

	Item	Quantity if applicable	Condition Upon Arrival	Condition Upon Departure Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.
KITCHEN	Cupboards			
	Floor covering			
	Walls and ceiling			
	Counter surfaces			
	Stove and oven, range hood (broiler pan, grills, etc.)			
	Refrigerator (ice trays, butter dish, etc.)			
	Sink and garbage disposal			
	Tables and chairs			
	Windows (draperies, screens, etc.)			
	Doors, including hardware			
	Light fixtures			
LIVING ROOM	Floor covering			
	Walls and ceiling			
	Tables and chairs			
	Sofa			
	Windows (draperies, screens, etc.)			
	Doors, including hardware			
	Light fixtures			

Note: any refund of the security deposit to which the tenant is entitled must be returned to the tenant within three weeks after the premises are vacated, as required by California Civil Code 1950.5.

	Item	Quantity if applicable	Condition Upon Arrival	Condition Upon Departure Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.
BATHROOM	Floor covering			
	Walls and ceiling			
	Shower and tub (walls, door, tracks)			
	Toilet			
	Plumbing fixtures			
	Windows (draperies, screens, etc.)			
	Doors, including hardware			
	Light fixtures			
	Sink, vanity, medicine cabinet			
BEDROOM	Floor covering			
	Walls and ceiling			
	Closet, including doors and tracks			
	Desk(s) and chair(s)			
	Dresser(s)			
	Bed(s) (frame, mattress—check both sides for stains—pads, boxsprings)			
	Windows (draperies, screens, etc.)			
	Doors, including hardware			
	Light fixtures			
HALLWAYS OR OTHER AREAS	Floor covering			
	Walls and ceiling			
	Closets, including doors and tracks			
	Light fixtures			
	Air conditioner filter(s)			
	Patio, deck, yard (planted areas, ground covering, fencing, etc.)			
	Other (please specify)			

Beginning Inventory Date _____

Signature of Tenant _____

Signature of Owner or Agent _____

End-of-Term Inspection Date _____

Signature of Tenant _____

Signature of Owner or Agent _____

HOW TO ORDER COPIES OF THIS BOOKLET

Copies of *California Tenants* can be purchased for **$2 per booklet.**

Bulk orders of 100 booklets or more can be purchased for **$1.75 per booklet.**

These prices include all taxes, as well as handling and shipping charges. Funds collected from the sale of these booklets will be used for future printings and translations of *California Tenants.*

To order, please complete the order form below.

ORDER FORM

California Tenants—A Guide to Residential Tenants' and Landlords' Rights and Responsibilities

Name: _____

Address: _____ Zip Code _____

Contact person
(name and telephone): _____

Please send _____ copies of *California Tenants—A Guide to Residential Tenants' and Landlords' Rights and Responsibilities.*

1-99 copies — $2 per copy.

100 copies or more — $1.75 per copy.

Enclosed is a check or money order in the amount of $ _____.

Please mail this order form (or a copy) to: **California Tenants, c/o Department of Consumer Affairs, P. O. Box 989004, Sacramento, CA 95798-0004.** Please allow **three weeks** for delivery of your order.

California Department of Consumer Affairs
P.O. Box 989004 • Sacramento, CA 95798-0004

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